# TRANSFER OF THE ALASKA RAILROAD

## HEARINGS

BEFORE THE

## COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

FIRST SESSION

ON

## S. 1500

TO PROVIDE FOR THE TRANSFER OF THE ALASKA RAILROAD TO THE STATE OF ALASKA

AUGUST 10 AND 11, 1981

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# CONTENTS


| | Page |
|---|---|
| Opening statement by Senator Stevens | 1 |
| Opening statement by Senator Murkowski | 1 |
| Text of S. 1500 | 4 |
| Section-by-section analysis | 17 |


## CHRONOLOGICAL LIST OF WITNESSES

### AUGUST 10, 1981


| | |
|---|---|
| Alex, Daniel, vice president, Land Operation for Eklutna, Inc | 54 |
| Prepared statement | 55 |
| Anderson, Nina, vice president of operations, Big State Motor Freight, Inc | 67 |
| Atwood, Winnie B., chairman of the board, Toghotthele Corp | 57 |
| Barber, Bruce | 69 |
| Blatchford, Edgar, chairman, Chugach Natives, Inc | 59 |
| Burton, Jack, president, Local 183 | 39 |
| Campbell, Jim | 88 |
| Davis, James, general manager, Alaska, Sea-Land Service, Inc | 64 |
| Dunham, Willard, Seward Chamber of Commerce | 44 |
| French, Ted | 70 |
| Gates, Christopher, manager, marketing and development, port of Anchorage | 82 |
| Garside, Thomas E., vice president, Common Carrier Services for Alaska Hydro-Train; accompanied by Thomas Allison, counsel | 50 |
| Graham, Douglas, vice president and general manager, Mammoth of Alaska | 68 |
| Hammond, Hon. Jay, Governor of Alaska | 18 |
| Hauver, Ron | 72 |
| Hundorf, Roy, president, Cook Inlet Region, Inc | 53 |
| Ingersoll, Charles, president, Lodge No. 1626, United Transportation Union | 36 |
| Lang, Herbert C., president, Anchorage Sand & Gravel Co., Inc | 89 |
| McMillen, Robert, president, Totem Ocean Trailer Express | 75 |
| Metcalfe, Hon. Ray, representative, State of Alaska | 35 |
| O'Neal, Dan | 79 |
| Oslund, Stanley | 48 |
| Parrish, Al, president, Sheffield Hotels | 40 |
| Ray, Hon. Bill, senator, State of Alaska | 32 |
| Sadler, Carl | 37 |
| Schiefelbein, Richard J., Deputy Administrator, Federal Railroad Administration; and Frank Jones, general manager, Alaska Railroad | 23 |
| Prepared statement | 25 |
| Sheffield, Bill | 86 |
| Swalling, Al | 60 |
| Tobin, William J | 45 |
| Ward, Robert, commissioner, Alaska Department of Transportation and Public Facilities | 20 |
| Supplemental statement | 21 |

Page

AUGUST 11, 1981

Opening statement by Senator Murkowski ..... 93
Bettisworth, Hon. Bob, representative, State of Alaska ..... 132
Prepared statement ..... 133
Black, Leonard ..... 118
Prepared statement ..... 119
Burnett, Hon. Ruth, mayor, city of Fairbanks ..... 109
Carlson, Hon. John, mayor, Fairbanks North Star Borough ..... 110
Coghill, Hon. John, mayor, city of Nenana ..... 135
Drew, Dr. James V., director, Agricultural Experiment Station, University of Alaska ..... 146
George, Al ..... 129
Jackovich, Joseph M ..... 155
Letter of August 5, 1981 ..... 156
Jansen, James, president, Lynden Transport ..... 141
Johnson, Robert W ..... 149
Jones, Frank H ..... 98
Martin, William C., controller, Sourdough Express, Inc ..... 128
Owen, Tom ..... 136
Reichardt, Paul ..... 139
Schiefelbein, Richard J ..... 103
Shelver, Larry, president, Yutana Barge Lines ..... 130
Ward, Bob ..... 94
Willis, Tim, president, Doyon, Ltd ..... 121
Prepared statement ..... 123
Wood, William R ..... 112
Young, John, chief of police, North Pole ..... 116
Prepared statement ..... 117
Zybach, Toney, freight handler, Alaska Railroad ..... 153

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

Burr, Pease & Kurtz, memorandum ..... 164
Burton, Edward G., statement ..... 161
Doyle, James C., Weaver Bros., Inc., letter of September 1, 1981 ..... 175
Dunham, Paul A., business representative, International Association of Machinists & Aerospace Workers, letter of August 14, 1981 ..... 174
Harlson, Howard H., president, R. F. Walker, Inc., letter of September 9, 1981. 175
Knappton Corp., statement ..... 159
National Audobon Society, statement ..... 160
Rule, Ben, Rule Trucking, letter of August 10, 1981 ..... 175
Sierra Club, statement ..... 159
Simpson, James A., president, Penninsula Shippers Association, statement ..... 161
"Strong Board Needed for Railroad," article ..... 116
Taylor, Marvin P., chairman, Alaska Transportation Planning Council, letter of August 1, 1981 ..... 172
"The Case for Owning the Railroad," article ..... 115

# TRANSFER OF THE ALASKA RAILROAD

MONDAY, AUGUST 10, 1981

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
*Anchorage, Alaska.*

The committee met at 9 a.m., Hon. Ted Stevens presiding.

## OPENING STATEMENT BY SENATOR STEVENS

Senator STEVENS. This is a hearing of the Committee on Commerce, Science, and Transportation. The committee is holding this hearing at my request on S. 1500, a bill that Senator Murkowski and I introduced which will provide for the framework for the transfer of the Alaska Railroad to State ownership. This Railroad has been funded and operated by the Federal Government. It is clear now that the Federal Government intends to end its involvement in this Railroad in the near future. The new administration stands firm in its desire to discontinue the business of operating railroads. Further, in view of the strong stand taken by the Department of Transportation and by the House of Representatives, it is clear to me that Federal funding for the Railroad will be drastically curtailed. That position was strongly set forth by Congress in the consideration of the future of Conrail, a large freight railroad operating in the Northeast and Midwest. In that case, Congress approved legislation which mandates that Conrail be sold and Federal funding for the railroad cease.

I hope that everyone realizes that the provisions of S. 1500 will be revised to insure that the objectives of the legislation are truly met, and that the committee will welcome any recommendations in this regard. I hope we will not lose sight of the fact, however, that someone must assume responsibility of the operation of the railroad if it's to survive.

Copies of S. 1500 are available through my office. Also, I have a section-by-section analysis of the bill which will be put in the record after the bill. Further, I should mention that we have staff members here from the Commerce Committee; Pamela Garvie with the majority staff and Linda Morgan with the minority staff.

## OPENING STATEMENT BY SENATOR MURKOWSKI

Senator MURKOWSKI. I am pleased to be with you today for the hearings on S. 1500, a bill to authorize the transfer of the Alaska Railroad from the Federal Government to the State of Alaska.

The Alaska Railroad has played an important role in the development of Alaska. It runs now from Seward to Anchorage and through to my home of Fairbanks; proposals exist to extend its services even further. It connects seaports with railcar facilities,

airports, coal mines, and military bases, to name a few. It is a critical artery in the transportation system of the State.

The State of Alaska is at a threshold in its development. New markets are available for Alaska's enormous coal reserves which can be developed instate and exported to the Pacific rain countries which are anxious to find alternatives to oil. In order to utilize this resource, there must be a reliable and economical means of transportation. The Alaskan Railroad is the logical method to get this resource to the marketplace.

Ironically, this is also a critical time in the life of the Alaska Railroad. The Reagan administration has placed its highest priority on reducing the Federal burden on taxpayers and setting the Nation's economy on an even keel. Many Federal programs, large and small, have been targeted for reduction or elimination. After fiscal 1982, it is expected that there will be no money budgeted for the Alaska Railroad.

This means that the State of Alaska is confronted with a decision. Senator Stevens and I have introduced S. 1500 to facilitiate this decision and provide for the transfer of the Railroad, with all its assets and liabilities, to the State of Alaska. It provides for the continued operation of the system for both passengers and freight. While the legislation was carefully drafted to provide the State with maximum flexibility in the management, and the stucture of the Railroad, the Railroad remains subject to regulation by the Interstate Commerce Commission. The rights and interests of Federal Railroad employees are also protected by the bill.

Like many Alaskans, I have some concerns about the transfer, which I expect to be addressed in these hearings. What truly are the liabilities and assets of the Alaska Railroad? No one has been able to provide a definitive answer to this question. I hope that the Department of Transportation and the State of Alaska witnesses will addresss this matter. These should be spelled out clearly now.

The bill attempts to safeguard employees' rights. But, I would like to know what obligations we may be transferring to the State when it is required to continue existing contracts and agreements.

The legislation purports to give flexibility to the State in managing the Railroad. We must make certain that it does not restrict the State's rights in a way that would inhibit the State from operating a viable entity as any railroad would operate.

We must also make sure that the new arrangement for the Railroad does not compete unfairly in areas where competitors provide identical services and further, that the Railroad, in effect, does not subsidize directly or indirectly any other carrier it might connect with.

I am aware that there are claims against the Railroad and its properties by individuals and groups. I look forward to hearing from them and their proposals on how their legitimate rights should be addressed in this legislation.

The State of Alaska has an opportunity here but it also must recognize that by accepting ownership of the Railroad, it takes on a major responsibility as a seafood, freight, and passenger carrier. If the Alaska Railroad is to aid in the development of our resources, the Railroad needs a substantial injection of new capital to improve the railbeds and rolling stock.

The Alaska Railroad should continue to operate and the State is in the best position to guarantee its continued viability.

I look forward to hearing from the scheduled witnesses to improve our understanding of the Railroad's future.

[The bill and analysis follows:]

II

97TH CONGRESS
1ST SESSION

# S. 1500

To provide for the transfer of the Alaska Railroad to the State of Alaska.

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IN THE SENATE OF THE UNITED STATES

JULY 17 (legislative day, JULY 8), 1981

Mr. STEVENS (for himself and Mr. MURKOWSKI) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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# A BILL

To provide for the transfer of the Alaska Railroad to the State of Alaska.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

FINDINGS

SECTION 1. The Congress finds that—

(a) the Alaska Railroad, which was built by the Federal Government to serve the transportation and development needs of the Territory of Alaska, presently is providing freight and passenger services that pri-

marily benefit residents and businesses in the State of Alaska;

(b) continued Federal control and financial support of rail services in Alaska is no longer necessary; and

(c) in order to give the State government the opportunity to determine the Railroad's role in serving the State's transportation needs in the future, and to provide a savings to the Federal Government, the Railroad should be transferred to the State as other Federal transportation functions, including highways and airports, have been transferred since Alaska became a State in 1959.

DEFINITIONS

SEC. 2. In this Act, the term—

(a) "Alaska Railroad" means the agency of the United States Government that is operated by the Department of Transportation as a rail carrier in Alaska under authority of the Alaska Railroad Act (38 Stat. 305) (43 U.S.C. 975–975g), and the Department of Transportation Act (49 U.S.C. 1655(i));

(b) "rail properties of the Alaska Railroad" means all right, title, and interest of the United States Government to lands, buildings, facilities, machinery, equipment, supplies, records, and other real and personal properties which are administered by the Alaska

Railroad at the time of transfer as well as all intangible rights and interests of the Alaska Railroad at the time of transfer which are used or useful for continued operation and support purposes, and which are included in the closing agreement under section 4 of this Act, but does not include the following:

(1) The unexercised right-of-way reserved to the United States Government on all patents for land taken up, entered, or located in Alaska provided by the Act of March 12, 1914 (38 Stat. 305).

(2) The right of the Secretary to exercise the power of eminent domain.

(3) Real or personal property the Secretary determines prior to the time of transfer is needed to carry out functions of the United States Government after the date of transfer.

(4) Any money in the Alaska Railroad Revolving Fund determined by the Secretary to be needed to satisfy obligations incurred by the United States in connection with the operation of the Alaska Railroad which would have been paid from the Revolving Fund but for this Act and which are not assumed by the State pursuant to this Act.

(5) Those Alaska Railroad properties near McKinley Park Station described in section 9 of this Act;

(c) "Secretary" means the Secretary of Transportation; and

(d) "State" means the State of Alaska and any corporation, agency, or other entity designated by the Alaska State government to own, operate, or manage the rail properties of the Alaska Railroad.

TRANSFER AUTHORIZATION

SEC. 3. (a) Subject to the conditions of this Act, the Secretary shall transfer the rail properties of the Alaska Railroad to the State without direct monetary consideration to the United States, after the Secretary has certified that:

(1) The State has agreed to operate the rail properties of the Alaska Railroad as a rail carrier in intrastate and interstate commerce.

(2) The State has agreed to assume all Alaska Railroad rights, liabilities, and obligations at the time of transfer, including leases, permits, licenses, contracts, agreements, claims, tariffs, accounts receivable, accounts payable, and responsibility for all litigation filed after the date of transfer relating to such rights and obligations, except as otherwise provided by this Act.

5

(3) The State has established arrangements to protect the employment interests of Alaska Railroad personnel affected by the transfer including provisions that ensure: (A) the continuation of all collective-bargaining agreements in effect on the date of the transfer for their duration or until altered by the parties; (B) except for reassignments, separation for cause, resignations, retirements, or lack of work, the retention of employees for at least one year in their same positions; (C) the payment of compensation to retained employees for one year at or above the salary levels in effect at the time of transfer; (D) priority of reemployment for transferred employees terminated or laid off for lack of work, with Federal service included in determining seniority; and (E) credit for accrued annual and sick leave, seniority rights, and other accrued benefits that would otherwise be lost to employees of the Alaska Railroad because of the transfer.

(4) The State has agreed to allow representatives of the Secretary adequate access to Alaska Railroad employees and records when needed for the performance of functions related to the period of Federal ownership.

(b) The authority of the Secretary under this section shall terminate if the Secretary has not certified that the

State has satisfied the conditions under section 3(a) within one year from the date of enactment of this Act.

FEDERAL-STATE CLOSING AGREEMENT

SEC. 4. Within six months from the date of enactment of this Act, the Secretary and the State shall enter into a closing agreement that describes in detail the rail properties of the Alaska Railroad that are to be transferred under this Act.

FEDERAL RESPONSIBILITIES

SEC. 5. (a) This Act shall govern if there is conflict with any other law. Any claim for the rail properties of the Alaska Railroad under any Federal law other than this Act, for which legal title has not vested with the claimant, is hereby revoked.

(b) Lands to be transferred under this Act are—

(1) not public lands for purposes of section 3(e) of the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1602(e)) (85 Stat. 689),

(2) excluded from selection under section 12 of Public Law 94–204, as amended (89 Stat. 1150) (set out as a note following 43 U.S.C. 1611),

(3) excluded from selection under section 1425 of the Alaska National Interest Lands Conservation Act (Public Law 96–487) (94 Stat. 2515), and

(4) not available for conveyance under section 1430 of the Alaska National Interest Lands Conservation Act (Public Law 96–487) (94 Stat. 2531).

(c) Any Alaska Railroad employee who transfers to the State under section 3 of this Act who on the day previous to the day of transfer will have been subject to the civil service retirement law (subchapter III of chapter 83 of title 5, United States Code) shall so long as continually employed by the State railroad without a break in service, continue to be subject to such law; and for purposes of such law, and for no other purpose, employment by the State railroad without a break in continuity of service shall be deemed to be employment by the United States Government. The State shall be the employing agency for purposes of section 8334(a) of title 5, and shall contribute to the civil service retirement and disability fund a sum as provided by section 8334(a) of title 5, except that such sum shall be determined by applying to the total basic pay (as defined in section 8331(3) of title 5) paid to the employees of the State who are covered by the civil service retirement law, the per centum rate determined annually by the Director of the Office of Personnel Management to be the excess of the total normal cost per centum rate of the civil service retirement system over the employee deduction rate specified in section 8334(a) of title 5. The State shall also pay into the civil service retirement and disability

fund such portion of the cost of administration of the fund as is determined by the Director of the Office of Personnel Management to be attributable to its employees.

(d) Any Alaska Railroad employee who transfers to the State under section 3 of this Act shall not be eligible to receive severance pay under section 5595 of title 5, United States Code.

STATE OPERATION

SEC. 6. After the transfer to the State authorized by section 3 of this Act—

(a) the State-owned railroad shall be a rail carrier engaged in interstate and foreign commerce subject to the jurisdiction of the Interstate Commerce Commission under chapter 105 of subtitle IV of title 49, United States Code, and all other Acts applicable to rail carriers subject to that chapter except the Railroad Retirement Act of 1974, as amended (45 U.S.C. 231 et seq.) (88 Stat. 1305), the Railway Labor Act, as amended (45 U.S.C. 151 et seq.) (44 Stat. 577), and the Railroad Unemployment Insurance Act, as amended (45 U.S.C. 351 et seq.) (52 Stat. 1094): *Provided*, That the Interstate Commerce Commission may, after notice and opportunity for hearing, exempt the State from any applicable requirement of subtitle IV under conditions prescribed by the Commission.

(b) the portion of the rail properties of the Alaska Railroad within the boundaries of the Denali National Park and Preserve shall be subject to such laws and regulations for the protection of fish and wildlife and other park values as the Secretary of the Interior may determine with the concurrence of the Governor of Alaska, which concurrence shall not be withheld unless such law or regulation would interfere with railroad operation and support functions.

REVERSIONS

SEC. 7. (a) If within ten years after the date of transfer to the State authorized by section 3 of this Act, the Secretary finds that all or part of the real property transferred to the State under this Act, except the portion that lies within the boundaries of the Denali National Park and Preserve, is converted to a use that would adversely affect railroad operations, that real property, including permanent improvements to the property, shall revert to the United States Government, or the Secretary may demand and the State shall pay to the United States Government an amount determined to be the value of that property at the time it ceased to be used for railroad purposes.

(b) If rail service is abandoned over that portion of the rail properties of the Alaska Railroad that lies within the boundaries of the Denali National Park and Preserve, that

property, including permanent improvements to the property, shall revert to the United States Government, and jurisdiction over the property shall be transferred to the Secretary of the Interior for administration as part of Denali National Park.

(c) The Attorney General, upon the request of the Secretary, shall institute appropriate proceedings to enforce this section in the United States District Court for the District of Alaska.

OTHER DISPOSITION

SEC. 8. If the Secretary has not certified that the State has satisfied the conditions under section 3(a) within one year from the date of enactment of this Act, the Secretary is authorized to dispose of the rail properties of the Alaska Railroad. Any disposal under this section shall give preference to a buyer or transferee who will continue to operate railroad service.

M'KINLEY PARK STATION LANDS

SEC. 9. On the effective date of the transfer to the State, or one year and one month after the date of enactment of this Act if the Secretary has not certified that the State has satisfied the conditions of section 3(a) within one year from the date of enactment, that portion of Alaska Railroad land with improvements located within one-quarter of a mile of the McKinley Park Station, except the right-of-way land



86-369 O—81——2

with improvements located one hundred feet on either side of the mainline track and the land eight feet on either side of the "Y" track to the power station, shall be transferred to the Secretary of the Interior for administration as part of Denali National Park.

REPEAL AND AMENDMENT OF EXISTING STATUTES

SEC. 10. (a) On the effective date of the transfer to the State or one year and one month after the date of enactment of this Act if the Secretary has not certified that the State has satisfied the conditions under section 3(a) within one year of the date of enactment, the following provisions are repealed:

(1) The Act of March 12, 1914, as amended (38 Stat. 305) (43 U.S.C. 975–975g).

(2) The Act of June 24, 1946, to authorize certain expenditures by the Alaska Railroad (60 Stat. 304).

(3) The Act of July 19, 1932, concerning mining of coal adjacent to the Alaska Railroad (47 Stat. 707) (30 U.S.C. 208a).

(4) Section 6(i) of the Department of Transportation Act (49 U.S.C. 1655(i)).

(b) On the effective date of the transfer to the State, or one year and one month after the date of enactment of this Act if the Secretary has not certified that the State has satis-

fied the conditions under section 3(a) within one year of the date of enactment, the following provisions are amended:

(1) Title 5, United States Code:

(A) section 305(a), strike out "(3) The Alaska Railroad;" and renumber clauses "(4)–(8)" as "(3)–(7)".

(B) section 3401(1), strike out "(iii) the Alaska Railroad;" and renumber clauses "(iv)–(viii)" as "(iii)–(vii)".

(C) section 5102(a)(1), strike out "(iii) The Alaska Railroad;" and renumber clauses "(iv)–(viii)" as "(iii)–(vii)".

(D) section 5342(a)(1), strike out "(C) the Alaska Railroad;" and renumber clauses "(D)–(H)" as "(C)–(G)".

(E) section 7327, strike out all of subsection (a) and the subsection designation "(b)".

(2) Section 102(7) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 802(7)), strike out the words "and the Alaska Railroad".

(3) Title 49, United States Code, section 10749, at the end of subsection (b)(1)(B), insert "or"; in subsection (b)(2), strike out "; or" and insert a period; strike out "(3) the Alaska Railroad.".

(4) Section 324(a) of the Public Health Service Act, as amended (42 U.S.C. 251(a)) (58 Stat. 697), strike out "employees of the Alaska Railroad and".

(5) Section 202(3)(a) of the Alaska National Interest Lands Conservation Act (Public Law 96–487) (94 Stat. 2383), strike out the third sentence which begins "That portion of the Alaska Railroad right-of-way".

○

## Section-by-Section Analysis of a Bill To Provide for the Transfer of the Alaska Railroad to the State of Alaska

Section 1. Findings—This section contains the rationale for transferring the Alaska Railroad to the State. It points out the declining Federal interest in the Railroad, its increasing importance to the State, and the savings for the Federal Government.

Section 2. Definitions—This section defines the major terms in the bill including a definition of the rail properties of the Alaska Railroad that would be transferred to the State. The definition includes those assets of the Railroad that are used or useful for continued rail operations and would exclude from the transfer, the unexercised easements across private property, the Federal eminent domain authority, those assets the Secretary determines are needed for Federal purposes, lands near McKinley Park Station that are used by the National Park Service, and an amount of money in the revolving fund that is needed to cover Federal obligations arising from operation of the Alaska Railroad that survive the transfer to the State. The definition of a State entity to assume control of the Alaska Railroad is broadly worded to give the State government maximum flexibility to designate an appropriate organization for State ownership and operation after transfer.

Section 3. Transfer Authorization—This section has two parts.

Part (a) authorizes the Secretary of Transportation to transfer the rail properties to the State without payment from the State. The transfer could not occur until the Secretary has certified that the State has agreed to operate the Railroad as a rail carrier, to assume the rights and obligations of the Alaska Railroad, to protect the employees of the Railroad by continuing collective bargaining agreements and retaining employees in their present positions and salary levels for at least one year except for normal separations, to honor the seniority rights of present employees, and to recognize those accrued Federal benefit rights that would otherwise be lost as a result of the transfer.

Part (b) provides that the authority for a no-cost transfer to the State will terminate if the State has not satisfied the conditions of part (a) within one year after the date of enactment of the bill.

Section 4. Federal-State Closing Agreement—This section provides for a joint agreement between the Secretary of Transportation and the State, no later than six months after enactment, that would describe in detail the rail properties that would transfer to the State.

Section 5. Federal Responsibilities—This section has four parts.

Part (a) would give the Secretary broad authority to execute the transfer once the section 3 conditions are met. It would preempt other Federal law if there is conflict and would terminate any unprocessed claims under Federal law for Railroad property.

Part (b) would make Railroad lands that are to be transferred to the State ineligible for selection by Native Corporations.

Part (c) would continue in the Federal civil service retirement system those employees who presently participate in the system and who transfer to the State operated railroad.

Part (d) would make any Railroad employee who transfers to the State operated Railroad ineligible for Federal severance pay. Those Federal employees who choose not to transfer to the State would be entitled to all the normal rights and benefits under Federal law for discountinued employees.

Section 6. State Operations—This section would make the State operated railroad subject to the Interstate Commerce laws and other Federal laws dealing with railroads, except the Railroad Retirement Act, the Railway Labor Act, and the Railroad Unemployment Insurance Act. With the concurrence of the Governor of Alaska, Railroad properties within the Denali National Park would be subject to Park Service regulations that do not interfere with railroad functions.

Section 7. Reversions—This section would give the United States the right for 10 years to take back property, or to receive an equivalent payment from the State, if the State converts the property to a use that adversely affects railroad operations. The State would have broad flexibility to use the transferred land for any purpose authorized by State law as long as the use does not prevent the railroad from continuing to operate. It is intended that the transferred land could continue to be used for a variety of business and public purposes by the State in the same manner that the land has been used during the period of Federal ownership. Any railroad land within the boundaries of Denali National Park that is abandoned by the State would become part of the National Park.

Section 8. Other disposition—This section would authorize the Secretary of Transportation to dispose of the Alaska Railroad if the State has not met the conditions for a no-cost transfer within one year after the date of enactment. In carrying out

disposal under this section, the Secretary would attempt to dispose of the Alaska Railroad as an operating entity so that it could continue to operate as a rail carrier.

Section 9. McKinley Park Station—This section would convey to the Department of the Interior, those Alaska Railroad land holdings near McKinley Park Station that are presently used by the Park Service.

Section 10. Repeal and Amendment of Existing Law—This section would repeal the Alaska Railroad enabling act and other existing law, and make conforming changes to other Federal laws that mention the Alaska Railroad. These changes would become effective at the time of transfer of one year and one month after enactment if the Secretary of Transportation has not certified that the State has met the conditions of transfer within one year of the date of enactment.

Senator STEVENS. Our first witness this morning will be the Governor of Alaska, Governor Hammond, and I think you have Commissioner Ward with you at the same time?

## STATEMENT OF HON. JAY HAMMOND, GOVERNOR OF ALASKA

Governor HAMMOND. Yes.

Senator STEVENS. I indicated that our committee is willing to share this hearing with the State legislators. If any State legislators wish to join us here at the hearing table and participate in the hearing, we'll be happy to welcome you and treat this as a joint hearing with the State legislature.

Good morning, Governor.

Governor HAMMOND. Good morning, Senator. I very much appreciate the opportunity to express our concerns regarding the vital issue of vast economic and social importance to our State. That, of course, being the Alaska Railroad. In doing so, I again, would like to express my appreciation to you and the entire committee for this opportunity to express our views on pending Federal legislation to transfer ownership and operation of the Alaska Railroad, and to thank both you and Senator Murkowski for your continued efforts on behalf of this important State issue.

Since the completion in 1923, the Alaska Railroad has been a critical link in Alaska's sparse transportation system. It is unique in that it is the only federally operated and owned Railroad in the Nation. While Alaska favors a reduction rather than a perpetuation of the Federal role in the State, the prospect of the Federal Government's abrupt transfer of ownership after nearly 70 years raises significant and complex issues.

We must now address the question posed by Federal legislation to transfer the system to the State. For one thing above all others is clear: The Alaska Railroad must continue to operate in an uninterrupted and viable manner. A large majority of our people receive essential services from the Railroad. It provides a critical measure of intermodal competition in a State where transportation represents a disproportionately high share of the costs of delivering basic goods and services.

Because the Alaska Railroad, which has traditionally suffered a marginal economic existence, must maintain its competitive posture, the legislation providing for its transfer cannot restrict its current operating authority in any way. It also is important that legislation be structured in a manner which provides the State appropriate flexibility for continuing a full complement of rail services.

The Alaskans have cause for confidence in the economic future of our State. As we make the transition from our dependence on a

one-dimensional, nonrenewable-resource-based economy to an economy balanced by multiple resource development, the Alaska Railroad will continue to play a major role in the State's economic development, enhancing its own circumstances and contributing to the general collective prosperity of our people. Many of the major proposals for the wise and safe development of our natural resources, the expansion of our economic base, may well hinge on our railroad system. Thus, while the road is strategically sited and generally in good condition, deferred maintenance must be addressed and its rolling stock upgraded. These will require near-term capital investment.

It should also be stated that the employees of the Alaska Railroad remain one of its greatest assets. They are loyal Alaskans with a sense of mission for their work. If the transfer from the Federal to State ownership is to occur, it should be accomplished in a manner which will allow these men and women to stay with the system, to continue their service with enthusiasm.

With respect to the transfer of the lands held by the Railroad, it must be resolved in a manner which insures the long-term utility of the railroad and at the same time protects existing vested rights.

Mr. Bob Ward, commissioner of the State's department of transportation and public facilities, will expand on those concerns, but I can assure you that the State will continue to the cooperative relationship we have had with our congressional delegation regarding the transfer of the Railroad. We understand the need to expedite consideration of the transfer legislation which reflects our abiding concern that the Railroad's transfer be structured in a manner which will insure its long-term viability. We will make these suggestions available to you in the near future.

Meanwhile, again, on behalf of the people of Alaska, I wish you success in your deliberations and thank you again for the opportunity to express our views on this important matter.

I might add to those prepared remarks, from basic concerns as you well know, our transportation system within the State entail some change in thoughts and expenditures. Our ferry system, for example, is roughly one-half of the cost of operating the ferry system are, in essence, are subsidies of the State amounting to something like $21 million. It is similar to your highway transportation system—is a—an operation which is—incurs substantial costs to the people of the State and appropriately so. But it is with some concern that we view the acquisition of another transportation mode which, if it is not operated in a businesslike manner, could incur vast subsidies from the State and those already borne.

Nonetheless, it is an integral link in our transportation system, a necessity that will be maintained to our ability and we're prepared to work with you in a cooperative manner to make sure that a most viable and a most cost-effective system is maintained.

Senator STEVENS. Thank you very much, Governor. Do you believe that there is a sufficient existing law for the State to negotiate with the Federal Government to carry out this transfer, or will additional legislation be necessary?

Governor HAMMOND. Again, I would ask Bob Ward to respond to that. It is my understanding that there is sufficient law, but I am not certain of that; no.

Senator STEVENS. All right. Governor, if you wish to be going on, I know we've all got busy schedules now. I don't have any further questions. We'll be in touch with you.

Governor HAMMOND. All right.

Senator STEVENS. I hope that you will be willing to come back if we hold a hearing in Washington.

Governor HAMMOND. I would like to hear the commissioner's response to your query to me, if he is prepared to give it.

Senator STEVENS. Mr. Robert Ward. Bob, are you ready to testify and answer the question.

**STATEMENT OF ROBERT WARD, COMMISSIONER, ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES, STATE OF ALASKA**

Mr. WARD. The question related to State legislation, I'm sure that there will need to be State legislation to accommodate the transfer.

Governor HAMMOND. There will be?

Mr. WARD. Yes.

Senator STEVENS. For the purpose of negotiation or for the purpose of finalizing it?

Mr. WARD. Oh, not for the purpose of negotiation but for finalizing it.

Senator STEVENS. Well, I'd like to thank you.

Mr. WARD. Senator, it's a great pleasure for me to be able to join the Governor in welcoming your committee to Alaska and I am grateful for the opportunity to make our comments known.

For the record, we've given your staff copies of a report completed for us by consultants. For nearly a year now at the Governor's direction, we have been working with John Gray at the Institute of Social and Economic Research at the University of Alaska and John Bivens from Bivens Associates on this report and I'm sure it will be helpful to the committee.

A brief statement from myself is included and I'll just summarize that statement.

One general concern is that the transfer from Federal ownership to a State entity accommodate the same operational opportunities that the Federal Government has enjoyed in operating the Railroad. The Railroad has had a somewhat marginal experience in terms of financial operations. We feel it is important, if not in fact imperative, that the the same opportunities accommodate a new successor entity like the State to have the same flexibility that the Federal Government has had in operating the Railroad. Under this one general umbrella constraint, therefore, we have four primary concerns that we are working on right now in addressing the terms of the legislation.

One concern, as the Governor mentioned, is the employees of the Railroad who have spent their entire career with the Alaska Railroad and have the knowledge and the expertise required for its efficient operation. The employee have accumulated, substantial rights and benefits for their career's work. We feel that these should be protected, and also, we feel that those employees should be drawn on by whoever operates the Railroad. In that context, we're very supportive of the legislation in protecting those rights.

On the other hand, we are concerned with the liabilities that might pass to the State and the open-ended labor agreements and contracts. We feel that these should certainly be addressed so that the hands of the State or any successor organization are not tied in terms of dealing with the long-range future of the Railroad operation.

Second, we think that the land issue should be resolved. Lands are very critical to the operation of the Railroad, not only for the right of way in the trackbed itself, but for the ability to maintain that right of way and trackbed and also to maintain a viable operation in terms of the business involvement that occurs on lands adjacent to and part of the Railroad system.

Third, we feel that the regulatory mechanism should again provide the State operation the same flexibility and opportunities the Federal Government has had to be able to compete. I do not mean to compete at an unfair advantage, but at least have the flexibility to be able to compete and make it a viable railroad operation.

The fourth area which I would like to discuss just briefly are the options which we are considering for the organizational structure of the Railroad and we are looking at the possibility of direct State agency operation. An authority concept is another option. A State authority could actually run the Railroad. A third option would be for an umbrella organization, like the State authority, to contract to private enterprise for the management of the Railroad. The authority would be able to provide capital. A fourth option, is private ownership itself.

We are working very closely with the State legislature and committees, both the House and Senate and you will hear from them later. We expect that within the balance of the summer we will work with the legislature to develop legislation that will be discussed in its next session. The legislation should provide for the finalization of the Railroad transfer to the State and determine the organization structure.

With that, Senator, I conclude my remarks.

Senator STEVENS. I assume that if we have a hearing in Washington, you will be able to come back and answer the questions of the Members of the Senate and House?

Mr. WARD. Yes. And right now, our staff has worked with yours very closely, Senator, and we are grateful for that cooperation and we will continue that effort in terms of more precise concerns about the legislation and yes, we will be available.

Senator STEVENS. Will there be someone here from your office through the balance of this hearing?

Mr. WARD. Yes, there will. Mark Hickey who has been the lead for us on it will be here all day.

Senator STEVENS. Thank you, Bob. I appreciate it. We'll be working together as we go ahead with the bill.

Mr. WARD. Thank you.

[The following information was subsequently received for the record:]

SUPPLEMENTAL STATEMENT OF ROBERT W. WARD, COMMISSIONER, ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

As Alaska Transportation Commissioner, I am pleased to submit to the U.S. Senate Committee on Commerce, Science and Transportation testimony supplement-

ing that presented by Governor Jay S. Hammond and myself at hearings conducted in August in Anchorage and Fairbanks on S. 1500, providing for the transfer of the Alaska Railroad to the State of Alaska.

As Governor Hammond noted in his remarks before Senators Stevens and Murkowski in Anchorage, the continued operation of the Alaska Railroad is critical to the economic well-being of our State. It will also play a major and crucial role in our future development. Responding to the announced intention of the Federal Administration to transfer the railroad to State ownership, the Governor has initiated an effort coordinated by the Department of Transportation and Public Facilities, to identify our concerns with respect to transfer of the railroad, develop suggestions for the pending legislation which address them and to prepare ourselves for the role envisioned for the State. This testimony will detail the areas of our concern in substantially greater detail than our presentations in August and we will be prepared to submit specific amendments to S. 1500 at the appropriate time during the legislative process. Essentially, our objective is the development of transfer legislation which ensures the on-going viability of the Alaska railroad under State ownership; enjoys broad support to facilitate not only its enactment but the enactment of necessary State implementing legislation as well; and provides a transition mechanism mutually acceptable to the Federal and State governments.

The State is concerned about a number of other issues regarding the railroad property. The State feels strongly that the property must be transferred in fee and is reviewing the reversionary interest retained by the Federal government in S. 1500 to ensure it is the absolute minimum which the Federal government has customarily retained in analogous transfers. The reversion clause also must reflect our proposed approach for dealing with the Native claims issue. The State is concerned with the Federal Railroad Administration's lack of a comprehensive survey of the railroad's holdings, property and other assets particularly since the proposed legislation excludes property which the Secretary of Transportation determines may be needed by the United States government as well as certain funds in the Alaska Railroad Revolving Fund. We will be working to develop much more detailed information in this regard prior to enactment of the legislation, rather than waiting for the six month transition period envisioned by the Statute. Alternative mechanisms for sorting out these issues should be considered. We are working with the Railroad to develop a comprehensive assessment of its liabilities, which the legislation envisions the State will assume. Also, the issue of railroad properties within the Denali National Park is not treated to overall satisfaction in the proposed legislation. We understand that the U.S. Park Service is amendable to resolving this issue to our mutual satisfaction at an early date and we will be working to do so.

As both Governor Hammond and I noted in our August testimony, the passage a decade ago of the Alaska Native Claims Settlement Act. (ANCSA) and resultant claims against Alaska Railroad properties have clouded title to significant portions of the railroad's holdings.

The proposed legislation would deal with this cloud by extinguishing all filed Native selections within railroad lands, other than those that have proceeded to patent, and by requiring the State to defend against any resulting Native claims. We believe that this approach could very well impose the burden of lengthy, expensive, and acrimonious litigation on the State.

The State is committed to the notion that, in order to realize its potential contribution to the future economic development of our State, the railroad must have the ability to expand. The Act of March 12, 1914 (38 Stat. 305), authorizing the development of Alaska Railroad, envisioned and authorized a 1,000 mile system. The railroad today consists of 419 miles of main line track and some 115 miles in branch lines. The pending legislation excludes the unexercised right-of-way from the transfer. The State believes that potential expansion is so critical to not only the railroads own viability but also to the development of the State's economy that simply waiving the unexercised right-of-way is not in the larger public interest and should be re-evaluated. We are interested in exploring non-confiscatory mechanisms to provide for expansion in a manner mutually acceptable to the State and the Federal government.

In addition to property issues, the legislation poses operational issues of concern to the State. The railroad's competitive issues of concern to the State. The railroad's competitive position and employee benefits and protection constitute the major ones. Both vitally affect the viability of the railroad.

The Governor and I both indicated at the hearings that the transfer legislation must not in any way restrict the railroad's competitive posture. At present the railroad is a marginal economic proposition with substantial capital requirements. Nevertheless, the railroad provides an absolutely critical measure of inter-modal

competition in a state where transportation represents a disproportionately high share of the cost of delivering goods and services. For these reasons, the State's authority to operate it should not be constrained artificially. The railroad does not unfairly compete today, nor does the State envision it doing so under State ownership. Recent studies by the Interstate Commerce Commission demonstrate that the railroad is not subsidizing its water/rail traffic and that its rates for this competitive traffic recover the full variable cost of such service. We note that the railroad's principal competitors have suggested amendments to the legislation which would tend to cripple its ability to compete. We are pleased that the Federal Railroad Administration has opposed them as we do. However, our steadfast determination to protect the railroad from crippling restrictions does not suggest we lack interest in addressing the concerns posed by the competing carriers.

Whether the State-owned railroad will be subject to Federal antitrust laws and the jurisdiction of the Interstate Commerce Commission and the impact of the Staggers Rail Act of 1980 are issues which we are studying. There appears to be disagreement on these questions but we understand that resolving them may reduce concerns about prospective unfair competition. We will endeavor to do so in the interest of facilitating enactment of acceptable legislation.

The State recognizes that the employees of the Alaska Railroad are one of its most important assets and is very anxious that the legislation and the subsequent transition facilitate their retention by the State-owned railroad. Although this may seem to be an easy objective to meet, it poses complex issues involving labor agreements, employee benefits and pension rights. Interfacing parallel State and Federal benefit packages and pension systems may prove difficult. Accordingly, we are reviewing the labor protection aspects of recent and possibly precedential Federal legislation involving the Milwaukee, Conrail and Rock Island railroads as well as instances in which Federal employees were transferred to State or private payrolls in the context of the disposition of Federal assets. In developing suggestions for the legislation, the State will continue to work closely with the FRA as well as with employee and union representatives to ensure that a mutually acceptable approach is taken which results in accommodation of State interests as well as the retention of these highly valuable employees.

Other issues which fall under the general rubric of railroad operations and which the State is examining in the context of its review of S. 1500 include the application of Federal Railroad Administration and Occupational Safety and Health Administration standards to the State-owned railroad to participate in Federal rail programs. Our review of these issues may prompt suggestions for the legislation as well.

As I noted in my testimony in Alaska, the State also is working to develop an organizational mechanism to assume responsibility for the railroad under State-ownership. In this regard, we are working closely with the State Legislature which will be addressing the question during its forthcoming 1982 Session.

In conclusion, the State is grateful for the opportunity to present its concerns regarding S. 1500. We remain steadfastly committed to the preservation of Alaska Railroad as a viable, operating railroad recognizing its critical role in our State and its potential for our future. As we pursue our efforts in this regard, we expect to continue to work closely with the FRA and the Alaska Railroad management. Their assistance has been greatly appreciated. Of course, we also will continue to coordinate closely with the State's able congressional Delegation in the interest of resolving our concerns quickly and satisfactorily and in positioning this legislation for enactment.

Again, thank you for this opportunity to provide additional testimony.

Senator STEVENS. Now let us hear from the representatives of the Federal Railroad Administration, Mr. Richard Schiefelbein and Mr. Frank Jones.

## STATEMENT OF RICHARD J. SCHIEFELBEIN, DEPUTY ADMINISTRATOR, FEDERAL RAILROAD ADMINISTRATION; AND FRANK JONES, GENERAL MANAGER, ALASKA RAILROAD

Mr. SCHIEFELBEIN. Good morning, Mr. Chairman.

Senator STEVENS. Good morning.

Mr. SCHIEFELBEIN. With your permission, I'd like to have the prepared statement entered into the record, and I'll try to summarize some of the viewpoints that have been raised already.

Senator STEVENS. Mr. Schiefelbein is the Deputy Administrator for the Federal Railroad Administration and Mr. Jones is the general manager of the Alaska Railroad. Please proceed, your full statements will be printed in the record.

Mr. SCHIEFELBEIN. Thank you.

It's a pleasure to be here this morning to present the Department of Transportation's views on S. 1500 to transfer the Alaska Railroad to the State. As you mentioned in your opening statement, it is the policy position of this administration to get the Government out of the railroad business. The approach taken on Conrail to return Conrail to the private sector is in many ways very similar to the approach recommended in your bill in transferring the Alaska Railroad to the State.

The concerns that the Governor presented, principally the concern that the Railroad should continue to operate and that the employees have continuing employment and there be a stable transition, are some of the principal goals of the Department in this transfer. As you are well aware because of your personal involvement in this legislation, the legislation calls for an implementing agreement to be worked out during the first 6 months after the bill is passed. It is in that implementing agreement that many of the details that are difficult to legislate can be worked out to assure that all the details of employee protection are covered. The transfer of lands can be worked out smoothly. Our goal is certainly not to cause disruption. Let's have as smooth a transfer as we possibly can.

Secretary Lewis wanted me to pass on to you his appreciation for the level of efforts that you've been able to put personally into this legislation, to Senator Murkowski and to your respective staffs. Without their cooperation, we doubt very much that there would be a workable bill in front of the Congress today.

The legislation, of course, would authorize the direct transfer of rail service on several conditions. Principally, those conditions are to insure that there is rail service in the State. The State would have to be able to assume the responsibility to provide rail service and to protect the employees—to protect the rights of the employees and the shippers along the railroad.

The bill is similar but not quite as complex as the Conrail legislation. In the Conrail situation, we do not have a single, identifiable entity which would be in a position to take over the operation, nor is it as near a breakeven operation as the Alaska Railroad is. The Alaska Railroad very clearly serves the freight and passenger transportaton needs of the citizens of Alaska. It very appropriately should be operated and owned locally through the State where it can best be responsive to the State's needs.

Many things have changed over the history of the Alaska Railroad and the State itself has changed greatly. The State department of transportation, which obviously never existed in the early days of the Alaska Railroad, is in a very good position, and is very capable to take over the functions of overseeing or at least planning the transfer from the State's viewpoint. With the State rail plan and the expertise that the State has developed in transportation, there is really no need nor appropriate role for the Federal Government to operate the Alaska Railroad any more.

The legislation provides a tremendous amount of flexibility in changing the ownership. It does not require or intend to dictate to the State how it should run the Railroad, but proposes that the State can either set up a State agency, some type of corporation or even a private entity to operate the Railroad so long as the basic conditions of continuing service, providing reasonable transition and job guarantees to the employees are met.

The transition of the transfer will be consistent with other transportation infrastructures within the State. Since Statehood, the highways, of course, have been transferred to the State. The railway provides similar functions and, frankly, should also be transferred.

The implementing agreement is probably the most important technical feature of the bill in making the bill work well. It is in this area in developing over a 6-month period, all the details of the transfer that we believe the purposes of the act can best be worked out. And we will work closely during that period of time with your staff, with the State, with the employees of the Railroad to make sure that the transfer does not disrupt service and does not put any employees in any worse position than they would be had the Railroad stayed under Federal ownership.

The area of the lands running through the national park is the one area where we think some minor technical additions are probably likely to the bill, to assure that there's a reasonable balance between the needs of the national park and the needs of the Railroad and to reassure Park Service that it would be possible to get reasonable right of access to cross the rights of way that pass through the park, access to powerlines, things of that nature, which we believe to be just a technical point, which we see no problem in resolving. We wholeheartedly support the transfer and this legislation and look forward to working with you and your staff, Senator, in implementing this transfer and assuring that there's continued rail service in Alaska with the employees and shippers who depend on the Railroad; have continued stable employment and shipping capabilities.

I'll be glad to answer any questions you might have.

[The statement follows:]

STATEMENT OF RICHARD J. SCHIEFELBEIN, DEPUTY ADMINISTRATOR, FEDERAL RAILROAD ADMINISTRATION

Mr. Chairman, it is a pleasure to present the views of the Department of Transportation on S. 1500, legislation introduced by Senators Stevens and Murkowski to provide for the transfer of the Alaska Railroad to the State of Alaska.

The legislation shifts responsibility for rail service in Alaska to the people who have the greatest interest in the future of the Alaska Railroad and the continued development of the Alaskan economy. It authorizes the direct transfer of the railroad to the State on condition that the State continues to provide rail service, assumes existing Federal responsibilities for the railroad, and establishes an appropriate structure to protect the interests of employees, shippers, and other users of the railroad.

The Alaska Railroad is an integral part of the economic base of the State. It provides vital transportation services to the State of Alaska. The railroad's freight and passenger trains serve the major markets of the State by linking the ports of Whittier, Seward, and Anchorage to Fairbanks and the interior of the State. Most of the State's commercial activity takes place along the rail line and many businesses are dependent on rail service. The majority of the State's population lives in communities that are served by the railroad. Although new highways and airports

have opened up vast areas of the State, the railroad still remains the only form of transportation to parts of the area it serves.

Although the railroad served the interests of the Federal Government in the past by opening up the Territory of Alaska and providing transportation for government cargo, today it exists primarily for the benefit of residents and shippers in Alaska and tourists who visit the State. The State of Alaska has experienced a period of rapid development since statehood in 1959.

The railroad also provides access to large areas of Alaska that will be the focus of future development. It is expected that there will be tremendous growth in the future as newly discovered deposits of oil, natural gas, coal, and other natural resources are developed. An adequate system of transportation is essential to sustain this economic growth, and the Alaska Railroad is an important part of that system. With the creation of the State department of transportation and the preparation of a State rail plan, Alaska has progressed to the point where Federal government operation of the railroad is no longer appropriate.

Transfer of the railroad to the State is consistent with the transfer of other Federal transportation facilities, including highways and airports that have been acquired by the State since statehood. Moreover, precedents exist for making the Alaska Railroad the responsibility of the State government. In recent years, other States, including Vermont and West Virginia, have acquired intrastate railroads that primarily benefit their citizens.

A smooth transition from Federal to State ownership is essential to prevent disruption of ongoing railroad operations and to prevent the loss of valuable railroad personnel. The legislation provides for a joint Federal-State agreement to be entered into after enactment that would describe in detail the railroad assets, obligations, and rights that would transfer to the State. The Department of Transportation is committed to working with State officials to develop and implement the transfer agreement once the legislation is enacted.

Cooperation between the Governor's office, the Alaska Congressional delegation and the Department of Transportation has been excellent in developing the legislation before your committee today. This is an important first step. The Administration supports legislation to transfer the Alaska Railroad to the State and may have some technical changes to S. 1500 in the near future. I am confident we can continue to work together to develop the agreements and companion State legislation that will be needed to complete the transfer process.

Senator STEVENS. Thank you very much.

Mr. Jones?

Mr. JONES. Thank you, Senator. Thank you for the opportunity to talk to you about the condition of the Alaska Railroad and continued support in our efforts.

The Alaska Railroad is a common carrier by rail filing all of its tariffs with the Interstate Commerce Commission. It is comprised of 526 miles of main line and branch line extending from Seward to Fairbanks and beyond to Eielson Air Force Base. The main line is constructed of all 115-pound rail. Additionally, we have 128 miles of yards and sidings. In my view, it is in good condition.

Based on FRA track standards, our Railroad has class 4 track. The overall national average is class 4; a few railroads have class 5 track, but no freight railroads operate over class 6 track.

We have 296 buildings used for various purposes from car and locomotive repair shops, transportation buildings, maintenance and track buildings, to even houses provided for our maintenance forces working in the interior.

The Alaska Railroad has 63 locomotives, 42 of which are in service, 20 are in storage, and have 1 leased. We have a progressive locomotive rebuilding program to provide for potential traffic increases.

We have 1,737 freight cars of which 400 are in the lower 48 earning daily per diem to help offset our foreign car per diem in Alaska. Some of our hoppers and tank cars have reached an age that they need to be replaced. We are in a posture of progressively

replacing some of our freight car equipment. Last fall, we acquired twenty-six 50-foot boxcars with only 5,000 miles each. We purchased 25 new 100-ton hopper cars and ten 89-foot flatcars for piggyback service this spring. We plan to purchase an additional 50 hopper cars this fall to replace some of our older hoppers.

We have 44 passenger cars of various types. One train set, or 10 cars, is recently in the lower 48 being refurbished into Amfleet style with electric power. This was made possible by a $4.2 million congressional appropriation.

We have 38,000 acres of land of which 12,000 acres represents our 200-foot right-of-way between Seward and Fairbanks. The remaining acreage represents our gravel reserve used in maintaining our right-of-way, our port property at Whittier, Seward, and Valdez, our classification yards, and lands that are predominantly rented by rail shippers. Additionally, these lands represent our future classification yard sites, railroad industrial parks, and other rail related uses. The value of our total fixed assets including provisions for retirements of nondepreciable property and depreciation is approximately $168 million. The book value of the total current assets of the Alaska Railroad as of July 31, 1981, represents approximately $28 million. This does not include the 38,000 acres of land. The fair market value of the 38,000 acres of land is $180 million and the gravel reserves are estimated at $80 million or a total of $260 million. This establishes the total Railroad assets at approximately $456 million.

Our current financial picture for 1981, including July's figures, show a botton line surplus, after depreciation, of $1,456,000 which is an improvement of $7.5 million over the same period for fiscal year 1980. We are on target to achieve our goal for fiscal year 1981 of gross revenue of $38 million with a bottom line surplus, after depreciation, of $3 million. That surplus will be obligated to capital improvements for the Railroad.

The Alaska Railroad, even with the increased traffic volumes of this fiscal year, is still considered a light density line [LDL]. The criteria of LDL is 3 million gross tons per mile or less which is used in the lower 48 as in indicator for abandonment. The light density of traffic experienced by the Alaska Railroad, except for the pipeline years, has been the basic reason for congressional appropriations to fund capital expenditures to maintain the Railroad in a good status, giving it the ability to handle increased volumes, thereby enabling it to improve its financial posture with the increased volumes.

The Railroad will handle for fiscal year 1981 2.9 million tons per mile. We are comfortable in handling an additional 1 million tons at our present level of maintenance. Portions of the revenue received from the additional volumes would be used to contribute to increased maintenance.

The Alaska Railroad is becoming a progressive railroad. This year we will be replacing 23,000 ties, resurfacing 150 miles of railroad utilizing 83,000 cubic yards of ballast, replacing 2 miles with new trackage, repairing 25 bridges, and purchasing additional rolling stock.

We have equipped our freight hauling locomotives with fuel savers and are in the process of installing positive traction control

devices on these units, which will also improve our efficiency and save fuel.

We recently resurfaced approximately 40 miles of railroad to the new maximum speed for passenger trains of 59 m.p.h., an Alaska Railroad first. As most of you know, our standard maximum speed has been 49 m.p.h. over the years. We will do an additional 40 miles next year.

We have introduced piggy back and van service between Anchorage and Fairbanks in 11 hours. Additionally, we have inaugurated the McKinley, now Denali, Express passenger train this year which provides for service between Anchorage and Fairbanks in 9 hours 45 minutes. And, we are actively pursuing our participation in the export of coal, which will aid us tremendously in stabilizing our financial picture.

The most important asset of the Alaska Railroad is its people. On October 1, we will have 461 full-time permanent employees that are loyal and dedicated and skilled in their profession as railroaders. In addition, we normally hire 150 to 185 temporary seasonal people during the summer months to do much of our track and equipment capital maintenance programs.

State ownership of railroads is not a new concept. There are approximately 25 railroads in the lower 48 that are owned by States, municipalities, and counties. It is true that these are generally considerably smaller than the Alaska Railroad, but the concept is the same as is with the British Columbia Railroad, which is a larger rail carrier participating in the development of that Province.

Employees of the Alaska Railroad are Alaskans, and what we do is for Alaska and Alaskans. The concept of State ownership, in my view, seems fitting and proper.

The Alaska Railroad has an extremely bright future, as does Alaska. The Railroad offers the most economical means of land transportation.

I see the Railroad playing an extremely vital part in the development of Alaska and its natural resources.

Senator STEVENS. Thank you very much. I'm sure we all commend you for the fact that, as reported in the paper yesterday, the Railroad is operating in the black.

Let me ask you, Mr. Schiefelbein, if the State doesn't take over the Railroad under this legislation, what steps would the Department of Transportation take to dispose of it?

Mr. SCHIEFELBEIN. If the State doesn't take over the Railroad, the Department of Transportation would take steps to get rid of the Railroad. Its first goals, of course, would be to try to find a buyer who would acquire it and continue rail operations. Only if there were no way to continue rail operations would anything more drastic, such as selling off the cars, be done. The first goal, if it were possible, would be to find someone who would run the Railroad.

Senator STEVENS. Some of the carriers that compete with the Railroad have suggested an amendment to this bill to limit the Railroad's ability to set rates and to engage in water or motor carrier activities. Has the administration taken a position on such amendments?

Mr. SCHIEFELBEIN. Yes; we have. We have reviewed these amendments and would recommend that they not be included in the legislation. The Staggers Rail Act, which gave railroads more rate and regulatory freedom last year, sets the minimum rate that a railroad should be able to charge in terms of whether or not a rate contributes to the going concern value of that railroad, which is a number different than 150 percent of variable cost. We do not feel that it's reasonable to put an artificial floor on rates that the Alaska Railroad can charge nor to restrict its participation in collateral activities to any more of a degree than other railroads in the country have those restrictions. We believe that the Alaska Railroad should be treated as any other railroad in the country.

Senator STEVENS. The legislation provides that the Federal Government shall retain the right for 10 years to take the property back or to get compensation from the State if the State converts the property to a use that adversely affects railroad operations. Of what significance is that provision to the administration?

Mr. SCHIEFELBEIN. The administration feels strongly about that provision. And if you look closely at it, it would take drastic steps on the part of the operator to even trigger that reversionary clause. Actually, actions would have to be taken to the property that was conveyed which would interfere with the ability to run a railroad. We have tried to avoid the type of restriction which would really be a nitpicking restriction, such as a prohibition against lands being leased or used for some other purpose which would not interfere with the Railroad; we wouldn't want to resort to the trigger in those cases.

Our principal goal in this is to insure that rail service is operated, that this isn't merely a land transfer; it's a continuation of rail service, and so long as the Alaska Railroad operates and achieves the basic goal of providing rail service, that provision won't be triggered. But it's there to insure that the Railroad isn't transferred and then the land is used for something else which would cause us to actually lose the ability to operate the Alaska Railroad.

Senator STEVENS. Could you compare the provisions of S. 1500 to those of the Conrail legislation that passed Congress recently? Are there any similarities that you think are significant?

Mr. SCHIEFELBEIN. I think there are two principal similarities. One is the Federal Government's resolve not to be involved in the railroad business, not to attempt to operate railroads, and that very clearly comes through both in the Alaska Railroad transfer legislation and in the Conrail legislation.

The other thing that comes through, I think, is the desire, in both of these pieces of legislation, to assure the continuation of the services. Simply, it's not a matter of stepping away from the problems, but a matter of finding an adequate way of transferring the properties so that they will be continued. In the Conrail legislation, for the first year and a half, I believe it is, the DOT will look for a single buyer who would buy the entire Conrail entity, very similar to the concept of transferring the entire entity of the Alaska Railroad. And it's only after that point in time (in the Conrail legislation), if Conrail cannot demonstrate profitability, that the Department would have the flexibility to look for multiple buyers to buy portions of the Railroad.

86-369 O—81——3

The overall goal of both of these pieces of legislation is to assure that essential rail service provided by each of these Railroads be continued and that employment is continued. The only change is the Federal Government should not be in the business of operating railroad operations.

Senator STEVENS. The committee staff has prepared a memorandum on the similarities between the Conrail bill and the Alaska Railroad bill. I am inserting it in the record at this point. If you have any comments on it, I would appreciate your passing them on to me.

Mr. SCHIEFELBEIN. Yes; we will review that before those hearings.

[The information follows:]

PURPOSE

The bills share the same purposes—(1) to get the Federal Government out of the railroad business as soon as practicable; (2) to ensure continued rail service with the least amount of disruption to shippers, employees, and communities; and (3) to protect the Federal Government's investment in rail properties and service.

MANDATORY SALE

To ensure that the Federal Government gets out of the railroad business, both bills mandate a transfer of the rail properties and provide a timetable for such transfers.

OPERATION AS A RAILROAD

To ensure continued rail service, both bills require the Secretary of Transportation to determine that the transferees will continue to operate the properties as a railroad.

ASSUMPTION OF RIGHTS, OBLIGATIONS, AND LIABILITIES

To ensure the least amount of disruption to shippers, suppliers, other carriers, and communities, both bills require the transferee to assume the rights, obligations, and liabilities of the carrier being transferred. This also helps ensure that the Federal Government's ties with the carriers are severed.

EMPLOYEE PROTECTION

To ensure the least amount of disruption to the employees, both bills provide for a continuation of collective bargaining agreements and priority hiring for employees deprived of employment.

REVERSIONS

To ensure that the transferees do not convert the rail properties to non-rail use, both bills include provisions that penalize the transferees for such conversions. The penalties take the form of a reversion to the Federal Government of any property or the proceeds from such property in the event of a conversion to non-rail use.

Senator STEVENS. Do you believe that S. 1500 adequately addresses the concerns of rail users, employees, local, and State governments? Representatives from all of these groups are going to appear today. In effect, I'm giving you an opportunity to comment on the testimony of the other witnesses that may be coming along. Are all of those interests of property addressed by S. 1500 in the opinion of the Department?

Mr. SCHIEFELBEIN. We believe they are. Obviously, the employees situation is very important. The employees, because they've been Federal employees for many years, have earned certain retirement and vacation and sick leave rights, and I could understand their concern if this transfer would take those rights away from them.

The legislation, however, assures that the State as the new owner would take over those obligations and these employees would be in no different position relative to things like sick leave and the ability to retire than if they continued to be Federal employees. There's also, in S. 1500, the reassurance that current employees of the Railroad would continue to be employed for a period of at least 1 year. This, again, is similar to the Conrail legislation in which railroads who purchase parts of the Conrail will be required to assure that those employees they hire have employment for quite a while. I think it's a 3-year period in the Conrail legislation. Other details, that get kind of complicated, in the employee transfers are rightfully subjects of the Federal-State implementing agreement which is covered by, I think it's section 4 of S. 1500 in which the details will be worked out in a manner that recognizes the employees and the shippers along the right of way. I believe that this legislation provides the vehicle by which the people of Alaska, both those who work for the Railroad and those who depend upon the Railroad, can be assured that there will be rail service provided over the Alaska Railroad in the future. I think that staying in the Federal sector has not provided that insurance because of the Federal resolve not to be engaged in businesses, particularly not to be engaged in operating railroads.

Senator STEVENS. We appreciate your concern and your assistance in the preparation of the legislation we have.

Mr. SCHIEFELBEIN. I would like to reiterate that the appreciation that the Department and the Secretary have for the efforts you've put into this legislation. I doubt that without your participation that it would be possible.

Senator STEVENS. Let me ask you, Mr. Jones, is there any impediment in this legislation to your continued operation of the Railroad up until the time of transfer? Do you need any additional authorization to continue to operate right up to the day when the Railroad is actually transferred to the State or to another entity under this legislation?

Mr. JONES. It is my understanding, Senator, that the congressional appropriations will be eliminated after fiscal year, 1982. As we now remain, the surplus relating to our revenues, I don't see any serious problem at this time. If the Railroad, if it should acquire several tons more than what we anticipate right now, there is a potential need of additional appropriation.

Senator STEVENS. There will be additional funding. However, as far as an authorization or any other changes in the existing law, do you feel you could go through the transition period operating the Railroad as it is until the date of the transfer to the State or another entity?

Mr. JONES. Yes. It is my understanding that October of 1982 is the cutoff time which, in my views, if the transfer is to come quickly, we are very confident.

Senator STEVENS. We thank each of you for your contribution and your statement here today. Thank you very much.

Mr. JONES. Thank you, Senator.

Senator STEVENS. Our next witness is Senator Bill Ray.

Good morning, Bill.

## STATEMENT OF HON. BILL RAY, SENATOR, STATE OF ALASKA

Mr. RAY. Senator, good morning. I think, sir, I should preface my remarks by saying in order to consider this particular problem, that we should more or less consider this in two parts. We should first consider the enabling legislation, and how we are going to acquire the Railroad before we actually go into what we are going to do with it after we get it. There seems to be a lot of people making that mistake here, they are getting that intertwined, so today my remarks are going to be on the enabling legislation and what the thrust will be.

Senator STEVENS. Sure.

Mr. RAY. Thank you, Mr. Chairman. I am State senator Bill Ray, chairman of the Alaska State Senate Transportation Committee and also chairman of the Senate Special Committee on the Alaska Railroad. I am here today to testify on behalf of those committees on S. 1500. First, let me state for the record that our primary concern with respect to acquisition of the Alaska Railroad is that the rights of the people of Alaska are protected and their best interests are served. In that vein, I have some specific questions and concerns regarding S. 1500.

On page 3, lines 14 through 17, the legislation provides for an exclusion of "Real or personal property the Secretary determines prior to the time of transfer is needed to carry out functions of the U.S. Government after the date of transfer." We would like to have an explanation of what this encompasses.

On page 4, lines 1 through 3, transfer of "Those Alaska Railroad properties near Mount McKinley Park Station described in section 9 of this Act" are excluded from transfer to the State. We would like to know for what purpose are those properties to be transferred to the Secretary of the Interior? For administration as part of the Denali National Park? It would appear that that is what is happening, and if this transfer is provided for, what restrictions will be place on the State of Alaska for its use?

On page 4, line 18 thorugh 25, sub (2), the State has agreed to assume all Alaska Railroad rights, liabilities, and obligations at the time of transfer, including leases, permits, licenses, contracts, agreements, claims, tariffs, accounts receiveable, accounts payable, and responsibility for all litigation filed after the date of transfer relating to such rights and obligations, except as otherwise provided by this act.

Senator, we need specific information and full definition of what the liabilities, obligations, contracts, and agreements exist the State would be assuming at the transfer of the Alaska Railroad. We are concerned that the people of Alaska may be assuming some nervous obligations that may make such transfer undesirable. Therefore, information on these items must be detailed, up to date, and made available to us as soon as possible.

Subparagraph (E) on page 5, lines 15 through 18, requires that the State establish arrangements to protect the Alaska Railroad employees "Credit for accrued annual and sick leave, seniority rights, and other accrued benefits that would otherwise be lost to employees of the Alaska Railroad because of transfer." The State of Alaska has its own laws on the books regarding public employee collective bargaining and already has in effect agreements with

employees. We are concerned that the State avoid being placed in the situation of assuming annual leave, sick leave, seniority rights, and other accrued benefits of current railroad employees that would have an adverse effect on our current contractual relationships with our other bargaining units and nonbargaining unit employees.

Section 5 on pages 6 and 7: A complete inventory of the lands to be transferred under this act should be made available to us for our consideration because specific identity of these lands is essential.

Page 7, section 5, sub (c), lines 4 through 10, at sub (c):

> Any Alaska Railroad employee who transfers to the State under section 3 of this Act who on the day previous to the day of transfer will have been subject to the Civil Service Retirement Law (Subchapter III of Chapter 83 of Title 5, United States Code) shall, so long as continually employed by the State Railroad without a break in service, continue to be subject to such law.

We must have specific knowledge of the obligations the State will be assuming if this provision requiring that the State participate in the Federal civil service retirement program is enacted. The State has an existing public employees retirement system covering its employees and again, we are concerned that participation in the Federal system for State employees could have an adverse impact on our existing system.

Pages 9 and 10, sections A, B and C: If within 10 years after the date the transfer to the State, authorized by section 3 of this act, the Secretary finds that all or part of the real property transferred to the State under this act, except the portion that lies within the boundaries of the Denali National Park and Preserve, is converted to a use that would adversely affect Railroad operations, that real property, including permanent improvements to the property, shall revert to the U.S. Government, or the Secretary may demand and the State shall pay to the U.S. Government an amount determined to be the value of that property at the time it ceased to be used for Railroad purposes.

(B) If rail service is abandoned over that portion of the rail properties of the Alaska Railroad that lies within the boundaries of the Denali National Park and Preserve, that property, including permanent improvements to the property, shall revert to the U.S. Government, and jurisdiction over the property shall be transferred to the Secretary of the Interior for administration as part of Denali National Park.

(C) The Attorney General, upon the request of the Secretary, shall institute appropriate proceedings to enforce this section in the U.S. District Court for the District of Alaska.

For what purpose does the legislation, providing for transfer of the Alaska Railroad, include this type of punitive obligation when we are, the State is, in fact, a part of this great country? Is Alaska being treated as a child to be punished by the Federal Government if it does not do as it is told? We do not feel that this legislation should contain this kind of language. Possibly, it should be an exclusion entirely.

Page 10, section 8, lines 11 through 17: If the Secretary has not certified that the State has satisfied the conditions under section 3(a) within 1 year from the date of enactment of this act, the Secretary is authorized to dispose of the rail properties of the

Alaska Railroad. Any disposal under this section shall give preference to a buyer or transferee who will continue to operate Railroad service.

Senator, this section again is a punitive one that requires the continuation of all collective bargaining agreements in effect on the date of the transfer. As I mentioned earlier, the State of Alaska has its own collective bargaining statute that provides for its employees. We are very concerned that the State is being asked to assume continuation of labor contracts that the State was not a party to in negotiation.

In closing, let me state that the provisions of the bill that we object to, or are lacking specific information on, are of great concern to us. We would hope that the committee will assist in providing the information requested in order that we may respond and make our position known prior to the enactment of any legislation that will effectuate the transfer of the Alaska Railroad to the State of Alaska.

The legislature of the State of Alaska is solely responsible for the appropriation of any moneys for expenditure in the operation of the State government. This proposed legislation includes provisions that represent financial obligations which could be assumed by the State, of mammoth proportions, some yet unquantified. The legislature is entitled to know the total and complete cost that the people of Alaska will be asked to pay, in the event of any transfer of the Alaska Railroad.

Finally, let me state again that our primary concern with respect to acquisition of the Alaska Railroad is that the rights of the people of Alaska are protected and their best interests are served.

Thank you, Mr. Chairman, and if there are any questions, I'll be more than happy to respond.

Senator STEVENS. Thank you, Senator. We'll be sure our staff gets together with yours and attempt to provide the information that you've outlined.

I just have one question. If we're not able to get together on legislation that would be approved by the State legislature, is the legislature prepared for the conclusion that the Railroad would be abandoned?

Mr. RAY. I believe that that is a question that's yet to be answered, Senator. I've been speaking for the Transportation Committee. As far as speaking for the Senate committee, that group which has the fair representation of all areas of the State, I think it was our position that the Railroad should continue. It is a vital link in the infrastructure of State transportation, and as such, it's necessary that it continue. However, it is not essential that it continue under the operation of the State government. If there is a private entity or there is some other means, perhaps, that is the way we should go. I think that I can safely say that the legislature does want the Alaska Railroad—in fact, is almost in full accordance that the Railroad is to continue operation.

Senator STEVENS. I think that's our mutual goal. Thank you very much, Bill.

Representative Metcalfe, do you want to proceed now? Good morning, Ray.

## STATEMENT OF HON. RAY METCALFE, REPRESENTATIVE FROM THE STATE OF ALASKA

Mr. METCALFE. Good morning, Senator. For the record, I'm Representative Ray Metcalfe, chairman of the State Affairs Committee and vice chairman of the special committee established for the purpose of considering the acquisition of the Alaska Railroad. Representative Betty Kato, who is also on the committee, and Red Swanson who is advising our committee, are also here in attendance.

In the disussions that have taken place thus far, there have been several concerns expressed. I think it is important to remind ourselves of the reasons we wish to consider operating the Alaska Railroad. Many Alaskans view the Alaska Railroad as the key to the future economic development of the State of Alaska. Before the Railroad can actually be that key, it is important that whoever receives and operates the Alaska Railroad have the ability to develop a profitable transportation facility without impediments standing in the way of its future expansion into our mineralized resource rich areas of the State. Upon reaching those areas, we also need to expand the rail and improve its access to the marketplace. This expansion of the rail must be by way of the international connection linking us through Canada to the lower 48 and expanding its resource to port facility to expand the deep-water ports and the connections to those deep-water ports.

With these concerns in mind, some committee members have expressed concerns about particular parts of the bill, the first being that on page 3, line 6, the act does not include the following.

One. The unexercised right of way reserved to the U.S. Government on all patents for land taken up, entered, or located in Alaska provided by the act of March 12, 1914.

The Railroad becomes far less valuable to the State of Alaska if it does not have the ability to expand. The act of 1914 includes 1,000 miles of corridor that the President has the authority to designate. And at this time, we have used only 550 miles of that corridor. I believe it would be a substantial hindrance to the future value of the State of Alaska of the Alaska Railroad if we should lose the access to these Federal lands within the State of Alaska. I think that we need to retain the power capacity of the President to provide us with further corridor space.

Two. A second concern, real or personal property the Secretary determines prior to the time of transfer is needed to carry out functions of the U.S. Government after the date of transfer. I believe that these items must be defined prior to our entering into negotiations and that we need to know what items the Secretary may reserve. We need all of the lands that accompany the railroad and its gravel deposits and all of those other facilities that make it possible to operate the railroad on a profitable basis.

A third concern, on page 4, line 18, the Senate has agreed to assume—excuse me—the State has agreed to assume all Alaska Railroad rights, liabilities, and obligations. I believe that that should be amended to include Alaska, the State, has agreed to assume all Alaska Railroad rights, lands, and properties, should also be added there.

So those are the three language concerns that have been pointed out thus far. The main reason for the concern is that we wish to see the Railroad expanded and in the absence of that expansion, it does place a cloud on the viability of the future of the Railroad and we have aired those concerns. Although we have't had a great deal of meetings thus far on the subject, those seem to be the dominant concerns that have been expressed thus far.

Senator STEVENS. Thank you. We will take into account the suggestions you've made and will be in touch with your committee staff, too, as this bill proceeds. We do appreciate your coming here today, and again, I welcome you or any other member of the State legislature that wants to sit through these hearings.

Mr. METCALFE. Thank you.

Senator STEVENS. We will hear now from the United Transportation Union.

## STATEMENT OF CHARLES INGERSOLL, PRESIDENT, LODGE NO. 1626, UNITED TRANSPORTATION UNION

Mr. INGERSOLL. Mr Chairman, members of the committee, fellow Alaskans, my name is Charles Ingersoll. I have worked for the Alaska Railroad for 35 years as a brakeman and conductor and I am the president of Lodge No. 1626 of the United Transportation Union.

The Alaska Railroad has played a very vital part in the growth of Anchorage and Alaska and we believe that the Railroad will play an even greater part in that growth in the future. The Railroad must be upgraded and kept viable in order to develop our coal and other resources.

With all due respect to the present and past management of the Alaska Railroad, we hope that the State will run it as a railroad and not use it as a political machine.

I'm quite disturbed with S. 1500 and also disturbed that our organization did not have the opportunity to make any comments on a pilot bill. We feel that the portions of the bill relative to employee protection are not clear, nor does it go far enough.

We feel that job protection should be much longer. You must remember that the train and engine employee will not be able to transfer to other Federal or State jobs. We have a very unique labor contract and our retirement system is figured somewhat different than other rail employees. All this, we feel, must be protected.

The bill covering employee retirement protection is incomplete. We feel that at the time of transfer, all eligible employees must be allowed the accelerated retirement provision of the civil service retirement program.

After the transfer, a time limit should be set for employees to choose between the State retirement system or stay with the civil service retirement system. That choice should be the employee's.

All employees now working would stay in the civil service retirement system until that specified time. Employees reaching retirement within that time frame could retire under the civil service retirement system.

The contract that the United Transportation Union has with the Alaska Railroad will continue through the time limit and before

the time limit expires, a new contract will be agreed upon and signed by both parties. The State of Alaska will recognize the bargaining unit that the employees choose.

Sick and annual leave will continue under this time frame. Craft seniority will also be protected.

All medical plans in effect will be continued by the operating agency which includes the Alaska Railroad Medical Association excess benefit plan.

All expenses incurred by Lodge No. 1626, United Transportation Union during the transfer time frame will be borne by the operator.

Senator Stevens, our organization's legislative department in Washington, D.C., our employees on the Alaska Railroad would be very happy to assist in gaining the wishes of our members that we represent here in Alaska. The train and engine service employees are a very vital part of the operation of the Alaska Railroad, and we feel that their rights should be protected. I thank you very much for giving me the opportunity to appear before you and will be ready and willing to assist your committee in helping to implement the language that we feel should be necessary. Thank you.

Senator STEVENS. Thank you very much. I'm sure we'll be working with your people in Washington as the bill progresses. The reason the bill was introduced at the time it was, was in order to have it printed and ready for distribution so we could have this hearing in Alaska during this recess. We will be working with you in making any necessary changes. We appreciate your comments. Thank you very much.

Our next witnesses are Mr. Jack Burton and Carl Sadler of the American Federation of Government Employees.

## STATEMENT OF CARL K. SADLER

Mr. SADLER. Senator Stevens, my name is Carl K. Sadler. I have been a member of the American Federation of Government Employees since 1961 and active for 14 years on Capitol Hill on behalf of Federal employees. During that period of time, it was my privilege to work very closely with you, Senator, and with Congressman Young. I would be remiss if I did not unequivocally say that every Federal employee in this great State should and does recognize the great contribution that you two gentlemen have made to their welfare as well as to the welfare of Alaska and, moreover, to our great Nation. I applaud you both and I know that they agree with me.

Today, I'm representing at its request, AFGE local 183, a labor union organized in 1935 and chartered by AFGE in 1952. Within its bargaining unit, there are 360 Federal employees.

These Federal employees consider this bill, sponsored by Senator Stevens and others, as well as the version by Congressman Young, so important to them that they have requested me to come from Washington, D.C., to Anchorage to present their case to you.

The significance of this bill is particularly evident at this time when the State of Alaska is entering upon an exciting era expanding its share in the extraction of minerals and their transportation, utilization, and transformation. The Alaska Railroad is destined to have a major role in that creation process. Consequently, it needs

to be even more responsive to the needs of the citizens of Alaska if it is to serve the needs of the citizens of Alaska if it is to serve the needs of all Americans better as so eloquently stated by you in the Congressional Record.

This is particulaly true at time when the Federal Government is seeking to divest itself of those functions which is considered to be within the domain of the States. Certainly, it can be argued that lying within the State of Alaska entirely, this Railroad can be more aggressively expanded by the State and local involvement in its management. Particularly when Federal funds may be curtailed in a Federal budget reduction process. For these reasons, the employees of the Alaska Railroad, including the members of AFGE Local 183, appreciate the considerations behind this bill and endorse the concept of transferring the Railroad to Alaskan ownership.

These employees want to transfer to proceed smoothly and their relationship with the new management beneficial to the State and to them and to the customers of the railroad and to the taxpayers. They preceive the possibility of a future where everybody gains and nobody loses.

With that perception for a mandate, I have reviewed the bill and with the full concurrence of the local, I should like to offer for your consideration some modifications in the language of S. 1500 dealing primarily with employee relations. The changes I am proposing would all take place in section 3(a)(3) appearing on page 5 of the print which I have received.

For the sake of clarity, I should like to present to you as a wholly new substitute draft, the modifications which AFGE Local 183 would like to propose. These modifications would substitute for the language now appearing in lines 1 through 18 in the printed bill on page 5.

Mr. SADLER. Although I believe that the language of our proposed substitute it self-explanatory, for the most part, I should like to comment on why it serves the best interests of all the parties concerned, the Federal and State governments, the employees, the customers, and the taxpayers.

First, our proposed substitute provides clarity. The employees now working for the Railroad, including bargaining unit and mangerial and supervisory employees, are familiar with these provisions. This means that, at the least, for the first 5 years, there would be no prospect of confusion or abrupt change and both management and labor would be spared any unanticipated conflicts or confrontations.

Second, our proposal provides clear guidance and precise mechanism for the transfer from Federal ownership and control to complete State control. Should the relations between management and labor be as good as we anticipate, within 5 years a collective-bargaining agreement would be reached beneficial to both sides, effectively placing all aspects of the railroad under State control. However, should there be some unanticipated difficulties, another 5 years are provided, during which time new employees and new managers would have been added who are able to reach agreement more easily. Thus the transistion would take place without any unacceptable troublesome labor conflicts.

Third, our proposal is equitable. It safeguards, by grandfathering the rights of current employees who might not be familiar with the State of Alaska practices. It also provides, over a reasonable period of time, those States of Alaska employment practices which will come into being through negotiation and collective bargaining. Thus the interest of all parties are equitably preserved; no one is forced to surrender rights or benefits to the advantage of someone else.

Fourth, through a clearly defined reduction-in-force and furlough provision, it confirms the rights of these employees vis-a-vis the Federal and State government and their rights to reemployment by the Railroad.

Fifth, and finally, an innovation provision for the assumption by the State of the payment of the employee's contribution to the Federal retirement fund provides an economic competitive advantage to the new railroad management to retain the most experienced and the most dynamic employees. This would enhance the economic power and the efficiency of the Railroad precisely at a time when it would need flexibility in maintaining the most efficient labor force possible.

I have submitted these provisions as a package, on behalf of AFGE Local 183, because I think that these few short lines of text would be all that would be needed to insure the best interests of all the parties. They contain all the provisions the Congress will need to enact so that all the parties were certain as to their rights and obligations. The savings through the elimination of litigation, of court costs, disputes before arbitrators, of repeated appeals to the Secretary of Transportation, even to the Congress itself, is obvious. The labor-management peace and cooperation of all parties, because their rights and obligations are clear, is another consideration.

I believe, when considered by all the parties, it will be evident that this proposal which I am submitting on behalf of Local 183 is reasonable and fair, taking into account the interests of the taxpayers of the Nation and the State, as well as the management and employees needed to operate the railroad on its transfer.

Senator Stevens, I include my statement and I ask that you hear a short statement from our president of Local 183, Mr. Jack Burton.

Senator STEVENS. Jack, be glad to hear your statment.

## STATEMENT OF JACK BURTON, PRESIDENT OF LOCAL 183

Mr. BURTON. Thank you, Carl.

Senator Stevens, committee members. Ours is a united effort to best serve the interests of all Alaskan railroaders. We speak not only for Local 183 of the American Federation of Government Employees, with the support from all AFGE unions in Alaska and our national office. We also speak for the International Association of Machinists, the Brotherhood of Railway Tie Men of America and in concert with the United Transportation Union and the American Train Dispatchers. There are no divisions. We stand together on this matter.

The 19th of June, 1981, Senator Stevens, I was in your Washington, D.C. offices. There, I made the statement that I had with me

the legislative department of AFGE to give me added clout. Your offices' reply was, "just being an Alaskan is all the clout you will ever need here."

With that in mind, we know you will carefully consider our desires that no Alaskan Railroad employee ever be harmed by this transfer bill.

All Alaskan Railroad employees, as well as all Federal employees, will be watching very carefully your response to our request.

Thank you.

Senator STEVENS. Thank you very much. We will be working with your people and we promise to go ahead.

Mr. SADLER. We appreciate very much the opportunity to be here and voice our opinions.

Senator STEVENS. Thank you very much. Our next witness is from the Anchorage Chamber of Commerce, Mr. Al Parrish.

## STATEMENT OF AL PARRISH, PRESIDENT, SHEFFIELD HOTELS

Mr. PARRISH. Senator Stevens, my name is Al Parrish. I am president of Sheffield Hotels and chairman of a task force made up of individuals from the Anchorage Chamber of Commerce, the Anchorage Municipal Assembly, the Municipal Administration, Eagle River Chamber of Commerce, the Resource Development Council, and the Railbelt Coalition. This task force was formed in late February to study and determine a position that would address the ownership of the railroad and its relationship to the future transportation needs of the State. I am here before you today in that capacity and also representing the Anchorage chamber.

After reviewing the situation, the task force arrived at a position relative to the ownership of the Railroad. That position is broken down into five main points. They are as follows:

First. The State of Alaska should aggressively pursue transfer of the entire assets and operation of the Alaska Railroad to an independent authority, autonomous from the State.

Second. The sole mechanism for establishing the authority shall be by amendment of the State constitution, so that the authority will function independently of existing State agencies.

Third. The Railroad should be operated and maintained by a qualified private operator, not excluding present railroad management and personnel, under contract to the authority.

Fourth. A transition team, representing the State, the Alaska Railroad, and the employees of the Alaska Railroad, should be established immediately to insure smooth operations during change of ownership.

Fifth. The long-term interest of the people of the State of Alaska and of the United States are best served ultimately by private ownership of the Railroad, once future line development is assured, and it can be operated profitably.

First, in section 1(B) page 2 concerning continued financial support by the Federal Government, we hope that this paragraph does not exclude the use of Federal funds for the purposes of defense of our Nation which was one of the primary uses of the Railroad in the beginning.

In section 2(b)(1) we have considerable concern over this portion of the bill and ask first, why is it in there? Our task force believes

that this provision, if left in S. 1500, would diminish the public policy that originally created the Alaska Railroad and would constrict the ability of the State to expand the services that are required to bring out the State's natural resources and to insure future profitability of the Railroad.

Senator STEVENS. Al, I think we've got to answer why that's in there. The State has repealed a similar right-of-way provision in the 1947 act for the State to have rights-of-way across homesteads. This is the right-of-way across homesteads as required by the 1914 act. We think the time has passed when the Federal Government or the State government ought to be able to take a right-of-way without compensation across someone's homestead that's been patented for years. This provision would prohibit the transfer to the State of the Federal Government's right to take a portion of a person's homestead without compensation. I frankly think this right ought to be repealed.

Now, you and several other members have already testified to the contrary. But I think that the 1914 idea that someone who homesteaded land is forever subject to a right-of-way for future railroad purposes is wrong, and don't think it should persist in the Federal law. So, that's why this provision is in the bill.

Mr. PARRISH. Aren't there other provisions in that portion of it that are in addition to the homestead right that could be left in that agreement?

Senator STEVENS. Well, it is a provision primarily aimed at the patents that were received from the Federal Government by people who entered lands and perfected them pursuant to homestead laws or other laws, and it reserved the right-of-way for railroad purposes. It's arguable either way, but since the State's already set the pattern by abandoning that concept in terms of the right-of-way for roads across homestead and other patents, we don't see any reason why the State should acquire a right to use homestead land without compensation. That's basically it.

We will take a look at it though and provide you and others with some of the background on that section.

Mr. PARRISH. I don't think, Senator, to answer that question, that our position would be that those homestead should be taken without compensation, and our concern is more specifically as it relates to that of the ability of that Railroad to expand in a timely fashion. That's why we would like to see it left in there if it could be modified with compensation being paid to those people that have homesteads. That would be something we would definitely want to maybe change our impression on.

Senator STEVENS. All right. Good.

Mr. PARRISH. Section 3(a)(2) page 4, if the State agrees to assume this portion in total, then it obligates itself for known or unknown claims going back to 1975, the statute of limitations, without the benefit that the Federal Government has through Federal Tort Claims Act. Our recommendation is that you include language that would indemify the State from any and all, know or unknown, claims or liabilities that occurred during Federal ownership and the State be responsible on a cost reimburseable basis, from the Federal Government for all litigation filed after the date of transfer that relate to prior claims.

Section 3(a)(3)(E) page 5, relating to the accrued benefits of the existing Alaska Railroad employees. We believe that the Federal Govenment should transfer funds to the State of Alaska in an amount equal to the accrued annual leave and sick leave plus any other accrued benefits, and that the State should be responsible for the continuance of these benefits for a period of time specified in this bill.

Under Federal responsibilities, section 5(A), page 6, we ask that you give full consideration to substituting the second sentence for one that would read, "The transfer of real property under this act shall be subject to valid existing rights." We feel that this change would provide for a timely transfer and minimize any potential litigation.

We further request that a minimum, additional study be done on whether section 5(b) is constitutional. We've received one legal opinion that it may be unconstitutional.

We suggest, rather that you delete section 5(b) entirely.

Under reversions, section 7(b) page 9, dealing with Reversions within 10 years——

Senator STEVENS. Wait a minute. Are you saying that section 5(b) is unconstitutional?

Mr. PARRISH. Well, we have one legal opinion that says that it's unconstitutional. We have asked at a minimum that you recheck and verify if, in fact, there are any constitutional problems with 5(b).

Senator STEVENS. I'd like to see a copy of that opinion if you can give it to us. What section 5(b) does is it states that the lands under this act are not public lands for the purpose of the Alaska Native Land Claims Settlement Act. Also they're excluded from selection under the Alaska National Interest Lands Conservation Act, and they're not available for conveyance under that act.

Now, if we don't specifically remove them from application of those acts, then they would still be lands subjects to those acts. This is not unconstitutional. Congress has the power to decide what are Federal lands, and we're saying that once they're transferred, they are longer lands that are subject to those acts that would transfer them to other entities. So, I certainly would like to know if anyone has an opinion that's unconstitutional. I can't see how it could be, but I'd like to know where the opinion came from, Al, because if we don't define what these lands are once they are transferred, they could be argued to still be Federal lands that were subject to the provisions of the Lands Act and the Alaska Native Claims Settlement Act and other acts.

Mr. PARRISH. I will ask the person that gave us that opinion to draft it up and then give it to us so we can send it to you with the balance of our testimony.

Senator STEVENS. We would appreciate that very much.

Mr. PARRISH. Under reversions, section 7(a), page 9, dealing with reversions within 10 years, we request that you delete this portion. The purpose for this being in the bill appears to be contrary to the intentions of the Federal Government. I would further ask if this same provision applies to every transfer of an airport or of a highway.

Senator STEVENS. Section 7(a) is the one that deals with reversion of property to the Federal Government, if the property has been converted to a use that would adversely affect railroad operations. Now, there is a similar reversion that goes with the Alaska Methodist University lands. That was 25 years ago. There's also a similar reversion in the Conrail legislation, and in acts that transferred lands to the State of Vermont and State of West Virginia. The reversion in this case is more narrow than all of those in the sense that there has to be a finding that the use that the property is being put to would adversely affect railroad operations. In the others, the reversion comes into play if the lands are no longer used for railroad operations.

So, we have tried to provide a much narrow reversion than has been in any of those laws to date. So again, I would urge that you ask the people who are studying this to compare it to other acts of Congress that pertain to the transfers of Federal land into non-Federal ownership and the reversionary clauses that were attached to them. Above all, take a look at the legislation pertaining to the Alaska Methodist University. If that land ceases to be used for university purposes, it would revert to the Federal Government.

Mr. PARRISH. I guess our concern in that area is the definition of "adversely affects the railroad," is something that possibly we felt uncomfortable with. I don't——

Senator STEVENS. It's much narrower than the normal clause which says, "If the land ceased to be used for railroad purposes, it reverts to the Federal Government." We've tried to make it as narrow as possible within the tradition of having a reversionary clause in the legislation.

Mr. PARRISH. Maybe our concern could be addressed by how many reversions have actually ever taken place in history and maybe we could address it that way.

Senator STEVENS. Some of them have taken place unfortunately. It used to be what they called the Morse formula, after Senator Morse of Oregon.

Mr. PARRISH. We have other concerns with S. 1500, but because of time, we'll submit those with our recommendations for change to you prior to the close of your hearings in Washington, D.C., in written form.

In summation, Senator Stevens, we feel that the ownership of the Alaska Railroad should be transferred to the State with the same amount of flexibility to expand the Railroad that is present to date with Federal ownership and that ownership is not contingent on the Federal Government returning in 10 years and taking it back. We further believe that the employees of the Railroad should be protected and afforded the benefits that they've had but not at the cost of the State for the accruals, only for the future benefits. And finally, that this legislation does not supersede any past legislation relating to any past rights of ownership.

In conclusion, we thank you for listening and request that you give full consideration to our recommended changes in S. 1500.

Senator STEVENS. Thank you. I want to publicly thank you and the chamber for the constructive way that you've approached the problem we're dealing with. I appreciate the help that you've been willing to give to me and to my staff, and I look forward to working

with you further on this. Again, we would very much like to have that opinion you referred to because it is going to have to be understood in order that people from other States don't get a false impression as to the intent of that provision. If there's a mistake in that provision that your counsel believes makes it unconstitutional, we'd be glad to change it.

Mr. PARRISH. Thank you, Senator.

Senator STEVENS. Thank you.

Willard Dunham of the Seward Chamber.

## STATEMENT OF WILLARD DUNHAM, SEWARD CHAMBER OF COMMERCE

Mr. DUNHAM. Senator Stevens, I thank you for this opportunity to address you today. I am speaking for the Seward Chamber of Commerce. We have established a committee to monitor and watch the production end of this bill, and I would like to present a short notice from the Seward Chamber of Commerce that we are vitally interested in today's proceedings and the progress of S. 1500 which is now being considered by the U.S. Senate of the 97th Congress.

Seward's initial being was contrived by the establishment of the Alaska Central Railroad which in turn became the Alaska Railroad. From 1905 to March 27, 1964, Seward served as the gateway to Interior Alaska for most of the freight being transported into our State for the central and northern areas and cities. The Good Friday earthquake changed all that by completely destroying all waterfront facilities. The railroad docks were rebuilt, but the traffic was gone and the use of the line never returned to that of pre-earthquake days. The use of the line decreased slowly to the point that only a small maintenance service crew was left manning the docks, yard, roundhouse, and section line.

The initial pipeline impact of freight destined for the North Slope had a significant impact in 1974 and 1975. The port crews set unloading records with antiquated cranes and outdated equipment, much to the surprise of the shippers using the facility. A decrease in freight and revenues again occurred, and now, the line is in dire need of large amounts of dollars to upgrade the equipment and the line to the State needed to meet the growing demands of the future export needs of our State.

Seward is once again looking forward to a buildup of railroad services, service needs for our community with the installation of grain elevators to store and ship barley from interior farms, coal from Healy destined for Korea and other Pacific-rim nations, railroad facilities to accommodate foreign fishing fleets' demands, increased interest in tourism, travel, trade, shipyards, exportation of logs from lands in the Nenana areas bound for Japan and other related fishery and outer Continental Shelf development. These all place increased dependency on continuing a upgraded rail service to our community.

Therefore, we in Seward are vitally interested in the Alaska Railroad receiving the best opportunity to do what it was intended to do when first conceived in 1905—assist and lead in the orderly development of our Alaska. We in the Seaward Chamber of Commerce feel that it is in our best interests of our State, for the Alaska Railroad to be truly Alaskanized by in its entirety, line,

transportation unhindered by unduly restrictive rules from the State of Alaska, from the Federal Government of the passage of S. 1500, I trust in its truest form possible.

We also ask that the transfer be done as expeditiously as possible and with as few strings attached as could be expected by enactment of such important legislation. Considering President Reagan's statement that he will not fund the Alaska Railroad Act after October 1982, it is of utmost concern to us that the line not be burdened more heavily than present by increased shortage of maintenance funds. We feel the State of Alaska has the financial means to upgrade the line and equipment which has fallen far behind due to an acute lack of maintenance dollars being available. The transportation corridors which have for scores of years stood waiting and unidentified are still looking for the rails which would offer promise and opportunity to our citizens to use and develop our State's vast resource wealth which each day our Nation's needs call for.

We realize that S. 1500 is not perfect and that some testimony here calls for slow and precise deliberations and possibly no action. But we also realize that under our political processes today, important legislation comes slowly and rarely, if ever, becomes law in the original state of introduction. Therefore, let us fairly assess what is best for Alaska and our Nation.

In closing, I would ask that you indeed transfer the Alaska Railroad from Federal ownership to State ownership and that you do it cleanly and with dispatch and that all property be passed over and that all present areas presently being served by rail continue to receive its service with continued equal regard to their respective needs. Thank you.

Senator STEVENS. Thank you very much, Willard, as I said to the Anchorage Chamber, I appreciate the help that you and your group have given to us. We look forward to working with you as this bill progresses. I appreciate that very much.

The next witness is Bill Tobin of Commonwealth North.

Good morning.

## STATEMENT OF WILLIAM J. TOBIN

Mr. TOBIN. My name is William J. Tobin and I am here as chairman of the transportation organization of some 300 businesses, labor and civic leaders of Anchorage and Alaska.

Our committee, newly formed and with only two meetings since its formation 2 weeks ago, is composed of 15 men and women who represent a variety of professions and disciplines. The list of members for your information and for the record, is attached to the written submission of my comments.

The charge given our committee by the board of Commonwealth North is "to identify the major transportation links needed to bring Alaskans together, to open up new opportunities for significant economic development, and to establish transportation priorities that will assist both urban and rural Alaskans."

Because of the recent introduction of S. 1500 by Senator Stevens for himself and Senator Murkowki, one of the first items before our committee, obviously, is the proposed transfer of the Alaska Rail-

86-369 O—81——4

road to the State of Alaska from the Federal Government—the subject of S. 1500 and of your hearings today.

However, we would not presume—after only two meetings—to come before you now with any sort of definitive proposals or conclusions. By the same token, we make no claim at this point of having any expert understanding of the language of S. 1500.

But we have looked at the bill and have begun to review other studies and other documents relating to the Alaska Railroad, including the enabling act under which it was created. And, as other Alaskans are doing, we have begun the process of trying to assess its place and its mission in the years ahead.

We trust there will be additional opportunities for us to add our thoughts and ideas as the legislation progresses through the Congress and as our studies defined what our committee, at least, sees as the proper course for the Federal Government and the State.

At this stage, our contribution can consist of no more than questions that suggest themselves as crucial to the intent of this piece of legislation—questions that must be examined as this bill is refined and moved forward.

Our committee feels answers are neded on these points, at least:

First. If the intent of the 1914 enabling act was to make the Alaska Railroad an instrument to open up and develop the country, will this new legislation to transfer the Railroad to the State be drafted in such a way that this clear purpose will remain unimpaired?

Second. Why should not the State receive the Railroad with the same rights, privileges and obligations as exist under Federal ownership?

Third. Should not the transfer language be as simple and precise as possible, without encumbrances that bind the State with restrictions that do not now exist?

Fourth. To insure the successful operation of the Railroad, isn't it essential for the Congress to declare that none of the existing railroad real property, right-of-way, mineral rights or equipment is surplus to railroad needs? In other words, if any part of the railroad is to be transferred, shouldn't all of it be transferred, without exception or limitation?

Fifth. If the State is to assume all of the responsibilities and obligations of operating the Railroad, should not then also it have the clear freedom to make all decisions about its future with regard to expansion or any other means that the future might take without having to receive congressional or Presidential approval?

Sixth. Why should any Federal controls, aside from those laws and regulations that apply to other private or State-owned railroads be applied to the Alaska Railroad under ownership of the State of Alaska?

Seventh. Why should not this legislation, if it is to assist rather than inhibit the future of the Railroad, provide clearly for State assumption of all unexercised right-of-way.

Eighth. Will the legislation in fact allow expansion of the Railroad if, in the judgment of the State, such extension makes economical sense and/or is deemed to be essential to the welfare of the State, will it allow that expansion?

Ninth. When the transfer is implemented, will the State acquire intact all of the Railroad, all that it has and all that it is? The thought here is that whatever its pluses and minuses might be, Alaskans are comfortable with how the Railroad now operates. Customers, employees and competitors, among others, at least know what there rules are. It would seen to make sense that the transfer be accomplished without the imposition of new rules, regulations or restrictions.

Tenth. Finally, a general question remains about the future. And to express it, I'm going to borrow a favorite line of yours, Senator Stevens, from the famous poet of the Yukon, Robert Service, who wrote: "A promise made is a debt unpaid."

It is the feeling of many Alaskans, we suspect, that the great promise made in the creation of the Alaska Railroad—to open up and develop the country—still has not been realized. And those who believe in the opportunities that lie ahead would be terribly disappointed if the final legislation somehow would prevent the Railroad from making the contribution that was envisioned nearly 70 years ago.

There will be many questions that will be raised by our committee as it attempts to propose some short-term and long-range programs involving the transportation future of Alaska. I have outlined 10 of them. There will be more, I'm sure.

We hope our efforts will be helpful to you as you continue work on the legislation and we trust our ideas, as they develop, will have a ready audience with you.

We have no answers now. But if I can express a sense of the 15 members of our committee, it is a feeling that the transfer legislation—if the State is, in fact, to become the owner of the Railroad—should be short, simple, straightforward, and devoid of encumbrances that will inhibit the State in its operation and management of the Railroad.

We hope to complete our overall report within 3 months and to have our report finalized and published by the year's end.

Obviously, we hope that the time frame will allow our findings to provide some valuable assistance to you and your staff as you continue to work on S. 1500.

In the interim, we stand ready to respond at any time—formally or informally—to any questions you may have of us.

Thank you, very much.

Senator STEVENS. Thank you, Bill.

Is there a relationship now between Commonwealth North and the chamber as far as this bill is concerned? I know the chamber's got a working group. You've got a working group. Are they interrelated at all?

Mr. TOBIN. No, they're not. I think one or two members who worked with the chamber may be involved in ours. But it was not a consideration that we're working together other than to share whatever information might be available. They provided us with a copy of their report. I have it.

Senator STEVENS. Well, I want to again offer our staff, either mine or the committee's staff, to work with people that are working with you. We do think we've got a short, sweet, simple bill compared to other bills that have dealt with the transfer of railroad

property or Federal property to non-Federal entities. I think it requires an understanding of where some of those provisions came from and how we changed them before the bill was introduced in order to accommodate what we thought would be the State's point of view. But we'll be glad to try to answer some of these questions that you've posed.

Mr. TOBIN. Fine, Senator, I appreciate that. We realize that our train is leaving the station a little later than others have so we have some catching up to do on our own.

Senator STEVENS. No, there's a good reason for that. We had to start early with the hearing at home here and in Fairbanks, because we expect the legislation to be passed by the end of January or early February, so that the time frame that's envisioned in the bill can work.

Mr. TOBIN. OK. We'll be concentrating on the Railroad at the outset. The final effort that we have will embrace much more than the Railroad. So I think our time frame will fit with yours. We hope we can be helpful.

Senator STEVENS. I think the question you've raised about the rights-of-way is the most difficult problem to deal with in view of the Alaska lands legislation and the rights-of-way provision that's in there. To get this bill through the House of Representatives requires that we really not try to modify the Alaska lands legislation. But at the same time, there's the commitment that was made when the Railroad was organized. That's going to be the most difficult problem to work out. There's no provision on this in the bill yet, and we're going to have to figure out how to do that.

Senator Murkowski, do you have any questions for our good friend?

Senator MURKOWSKI. No; I just got off an airplane. It's getting harder to travel every day.

Senator STEVENS. Thank you very much, my friend.

Mr. TOBIN. Thank you, Senator.

Senator STEVENS. The Alaska Raiload Leaseholders Association.

## STATEMENT OF STANLEY OSLUND

Mr. OSLUND. Senator Stevens, Senator Murkowski, my name is Stanley Oslund. I own and operate Stano Steel & Metal Co., in Anchorage which is on railroad-leased land. In 1968, when I purchased the lease from the previous leaseholder, it was necessary for me to reimburse him for the improvements he had made on the land, and this was supported by the Alaska Railroad. Therefore, I have always felt these improvements were mine to sell if I wanted to at a future date. In 1967, the year before we took over the lease, the Alaska Railroad had the land appraised and the lease was calculated on the value of the unimproved land. At the time of our takeover, we paid our lease on this basis. In 1972, the Alaska Railroad elected not to have a 5-year appraisal in this area. It was felt that the land values hadn't changed that much, so our leases continued pretty much as they were.

In 1977, at the height of the pipeline boom, the appraisals came under a complete new set of rules. The land was appraised in its present condition, which included the improvements that we had made and our leases were then calculated accordingly. This change

increased our lease almost 500 percent from $8,800 to $43,000 annually. And this was a common increase to many leaseholders. Because this raise was so devasting to many of us, we formed the Alaska Leaseholders Association, of which I am the president, to try to get some type of relief. We did get some temporary relief, but for the most part, our pleas have had little effect.

To prove this fact, in June, this year, the Alaska Railroad came out with order No. 4300 point 18, where it states, in part:

> Buildings and similar apparent above-ground structures constructed by the current lessee shall be deemed to belong to the lessee for the duration of their economic life, not to exceed the term of the lease and in any extension options. At the expiration of the lease, structures will be removed or become part of the railroad property at the lessor's option. All such tenant improvements should be fully amortized by the tenant during the initial lease plus any exercise extension options. If the assignee desires to renew the lease at the end of its term, the rent charged by the railroad shall be the market rent of the improved site including the land—the value of any buildings.

So, first it was our improvements; now, it's our buildings.

Then it goes on to further state:

> On short-term leases of 3 years or less, only portable, temporary structures should be constructed so that structures can be readily removed if the lease is terminated or not renewed.

So you can readily see the type of development that's going to occur along the Alaska Railroad. There will be temporary buildings of minimum value, and this will definitely have an adverse effect on the environment of our community.

Faced with this situation, the Alaska Railroad leaseholders felt it was time to take legal action. So we're now in litigation with the Alaska Railroad.

What we're concerned about is that if the State takes over the Alaska Railroad, that our leases be handled on an equitable basis with the other State leases. We are also concerned that if there's an adverse determination in the 10 years, what will our situation be? And then if the Federal Government does retain the ownership of the Alaska Railroad, we sure want to come to some fair and permanent solution without any change of rules every few years. But we do support an early takeover of the Alaska Railroad by the State of Alaska.

Senator STEVENS. Thank you very much. I'm sure you know that President Carter vetoed the bill that Congress passed dealing with this property. We have had meetings with some of the State legislators concerning that and with the State concerning the problems of the leaseholders here. I think it probably will be a question that has to be answered by the State rather than put into this legislation. That's because I'm certain that if we attempt to put in this bill the leaseholder provision that was vetoed, it would not be passed.

In any event, we will work with you, but my advice to you is, that the leaseholder problem be solved in the State legislation. In doing so we've got to make certain that this provision that has the reverter in it is not triggered by action which would lead to some long-term solution with regard to the leaseholders and their rights as far as State law is concerned. We just cannot run the risk of putting that provision in this legislation because it was vetoed on the advice of the OMB and the GAO. It wasn't a political issue, it

was an argument over philosophy and unfortunately, the same people are still in GAO and the OMB that recommended the veto before. So, I just don't think we ought to burden this bill with that problem, but it's going to have to be solved. I agree with that. I'll be happy to help address it with regard to the State legislature. Our State concept with regards to what the rental of undeveloped land should be, if it's subsequently developed by the lessee, is different from the Federal concept as recently enunciated by the GAO. So we will work with you and try to see what we can do.

Do you have any comment, Frank?

Senator MURKOWSKI. Well, Stan, the escalation that you experienced in 1977, I believe, that was negotiated down from $43,000 ultimately, was it not?

Mr. OSLUND. No; Senator Stevens was able to get a bill that gave us time for a 6-month study and we were given an increase of 100 percent of our original lease at that time for a period of 1 year. Now, that time has elapsed, and we're back up to the $43,000. We have paid——

Senator MURKOWSKI. So, you have no relief on that then?

Mr. OSLUND. None whatsoever.

Senator MURKOWSKI. Would you, I assume, favor the State providing an option for the purchase of the land rather than a lease at market value?

Mr. OSLUND. We'd very much like to purchase the land, and I think most of the leaseholders would, but as long as we can be treated fairly and equitably with the other State leaseholders, we'd be satisfied.

Senator MURKOWSKI. No further questions, Mr. Chairman.

Senator STEVENS. Thank you very much. We appreciate it.

I understand Tom Garside is there with Crowley Maritime. Would you be willing to testify before lunch, Tom?

**STATEMENT OF THOMAS E. GARSIDE, VICE PRESIDENT, COMMON CARRIER SERVICES FOR ALASKA HYDRO-TRAIN, ACCOMPANIED BY THOMAS ALLISON, COUNSEL**

Mr. GARSIDE. Mr. Chairman and members of the committee, my name is Thomas E. Garside. I am the vice president for Common Carrier Services for Alaska Hydro-Train. I am accompanied by Thomas Allison, our lawyer. Alaska Hydro-Train maintains offices in Fairbanks, Anchorage, Portland, and Seattle. We are the Alaska Railroad's only connecting water carrier between the lower 48 and the State of Alaska. As the primary connection to the Alaska Railroad, we have a tremendous stake and interest in the Railroad's future and very much appreciate being invited to testify today on S. 1500, introduced by Senator Stevens and Senator Murkowski.

First, I want to applaud your efforts and the efforts of this committee in carefully assessing the various issues raised by the possible transfer of the Alaska Railroad to the State so that whatever decision you reach concerning the Alaska Railroad will best promote the future of this State. The Alaska Railroad is an important part of the State's transportation system, and I don't have to remind you of the importance of transportation to Alaska or that transportation costs in Alaska constitute an unusually high proportion of the cost of living. Because the Alaska Railroad and its

connecting water carriers have a low cost structure stemming from their efficient operations, the Railroad serves to hold down transportation costs to the shippers in the State of Alaska. In turn, this holds down the costs of living, both through the rates that the railroad and its connecting water carriers are able to offer to rail shippers, and because of the effect these lower rates have on other carriers through the competitive disciplines of the marketplace. This relatively subtle but vitally important function of the Railroad is reason enough for this committee to carefully consider the legislation now before you.

Mr. Chairman, we endorse S. 1500 in the form in which you have introduced it and support its passage. While a number of the provisions of this legislation are not directly relevant to our areas of expertise, many of them are, and I will briefly set forth our views regarding some of the issues that have been raised in connection with S. 1500:

First, S. 1500 is not the only legislation that will be required to completed a successful transfer of the Alaska Railroad to the State of Alaska. Implementing legislation must also be enacted by the State which defines what sort of organizational structure will receive the Railroad properties and operate them once ownership is transferred from the Federal Government. In that regard, I would urge that whatever form of public control the State may desire to have over the Railroad policy or development through possible line extensions and so forth, that the actual operations of the Railroad be kept as nearly as possible to normal private enterprise principles. We believe the success of the Railroad to date and its future success is dependent upon operating in a commercial business-like manner. In particular, we do not believe the Railroad operations should be burdened with artificial restraints on the Railroad's efforts to serve Alaskan shippers or by artificial rate floors which have been proposed from time to time by the Railroad's competitors. These kinds of amendment will only cripple the Railroad, eliminate competition and boost the cost of living to Alaskans. The Railroad should be able to compete by offering any rate legally permissible, and is should not be prohibited from engaging in any otherwise legally permissible activity. By the same token, we do not believe that railroad freight operations should be subsidized by the public treasury of the Federal Government or the State of Alaska. In that regard, we would note that the existing provisions of the Interstate Commerce Act and the antitrust laws will effectively prohibit predatory pricing and other illegal attempts to eliminate competition once the Railroad is transferred to the State, thereby assuring that no problem will exist in that area.

Second, we would urge that the State funds which may be provided to Railroad in the future be provided for specific purposes—such as line extensions or passenger services, rather than as a block grant. This will help assure that subsidization of rail freight operations will not become an issue. We would especially suggest that passenger service be explicitly broken out and provided subsidy by the State or Federal Government rather than forcing possible cross subsidy from the rail freight operations. This has been done ever since 1971 in the lower 48 when the Federal Government agreed to take over the financial responsibility for the operating

losses of rail passenger service through Amtrak. There is no reason why the rail freight shippers in Alaska should be force to cross-subsidize rail passenger service when shippers in the rest of the United States do not. This is not intended to be a recommendation for the discontinuance of passenger services; rather, it is only a recommendation that the accounting for rail freight and rail passenger, including any public subsidy for passenger services, be kept clear in order to avoid confusion over the subsidy to rail freight services.

Another important subject for you and the State, in our view, is to assure that sufficient attention is given to the work force of the Alaska Railroad to prevent deterioration of morale. The Alaska Railroad in our experience has been a dedicated and capable work force, and it would be a shame if any of those skilled employees were lost because of uncertainty over the Railroad's future during the transition period. The services provided by these employees are frequently undertaken with antiquated equipment. For example, approximately 200 of the Alaska Railroad's freight cars were built prior to 1940 and cannot be operated in interchange service with the lower 48, and about 160 of these cars even were built prior to 1930 and can be operated only under a waiver from the Federal Railway Administration. The dedication and hard work of the Alaska Railroad employees makes for reliable operations even with these handicaps.

The Alaska Railroad is an important carrier for Alaska Hydro-Train, and the opposite is also true. Rail car traffic moving over the water/rail rates comprised 17 percent of the railroad's carloads handled during fiscal year 1980, and for 33 percent of the railroad's revenue. These freight movements were accomplished efficiently and profitably. In fact, a recent study by the ICC Bureau of Accounts agrees with our views that rail/water movements more than pay their way for the Alaska Railroad. If the railroad is transferred successfully to a new State entity in such a way that it is able to effectively function like any other private business, Alaska Hydro-Train is prepared to invest in its future by reequipping our fleet to provide greater capacity and better service. We believe that an Alaska Railroad which has the freedom to operate in a commercially sensible manner will be an excellent partner for the future, and its efficiencies can be expanded with the new bilevel Hydro-Train barges and other improvements.

Mr. Chairman, the railroad is an important part of the current Alaska transportation system, both for the freight it currently carries and for the effect of its efficient pricing on other transportation systems serving Alaska. The railroad can be an even more important part of Alaska's transportation and development future, through expansions by Hydro-Train and line extensions or other changes the States may decide to undertake. Hydro-Train supports your efforts to expeditiously transfer the railroad to the State of Alaska so it can better serve the citizens of Alaska and pledges to work with this committee and with the State to assure that that transfer is accomplished in a manner consistent with the public interest.

Mr. Chairman, I would be pleased to answer any questions the committee might have or to provide any further information from the record you may desire.

Senator STEVENS. Thank you very much. I don't have any questions.

Do you have any questions Frank?

Senator MURKOWSKI. Mr. Chairman.

In your testimony, Mr. Garside, you make reference to subsidization of railroad freight operations, and it's my understanding that the railroad does not charge the depreciation schedule, is that correct?

Mr. GARSIDE. I would not be competent to answer the cost accounting for the railroad.

Senator MURKOWSKI. The total depreciation schedule?

I may be mistaken on that, but I was under the impression that it was not a depreciation schedule corresponding with that of the rest of the industry; I'll check that out. My concern is that it's quite likely that the Railroad, in order to operate its freight services, would have to have some type of subsidy unless there's a sufficient backhaul in the form of coal or whatever that might develop in the future. Is that not generally perceived?

Mr. GARSIDE. That's not my understanding from the finding by the ICC investigation, Senator. Those rates which were charged, and I think the issue rates were the contract rates, that they were fully compensatory and profitable to the Alaska Railroad. I would assume that part of the Alaska Railroad's profitability relates to volume. I'm sure this changes, but I don't know—I think they went through and they pulled out in that study the passenger service costs and the other allied costs and found that the freight operation, per se, would meet the requirements under the Stagger's Act including capital; yes.

Senator MURKOWSKI. I have no further questions.

Senator STEVENS. Thank you very much. This will conclude the morning session of our hearing. We will convene again as soon as possible after 1:30.

[AFTERNOON SESSION]

Senator STEVENS. Could we please start off with the panel of the Native leaders that wish to testify? It's the Cook Inlet, Chugach, Eklutna, and Toghotthele.

State your name for the record and who you are representing.

## STATEMENT OF ROY HUNDORF, PRESIDENT, COOK INLET REGION, INC.

Mr. HUNDORF. My name is Roy Hundorf and I am president of the Cook Inlet Region, Inc. I appreciate this opportunity to appear before this committee, and thank you for taking the time and effort to hold hearings on this important matter in the State of Alaska.

The issue of the transfer of the Alaska Railroad from the Federal Government to the State of Alaska is an important one to all Alaskans for it incorporates both risks and opportunities for the State. With its land and natural resource bases, Cook Inlet Region believes that a viable Alaskan railroad can contribute substantially

to the sustained economic growth of the State. There are, however, certain aspects of the legislation in its present form which are of concern to us. I wish briefly to comment upon these today.

As with other Alaska corporations, CIRI was granted certain rights under the terms of the Alaska Native Claims Settlement Act. However, unlike other Native corporations, CIRI received additional rights under a complicated land exchange with the State and the Federal Government. This land exchange was authorized by Congress in 1976 by Public Law 94-204 and by the Alaska State Legislature in March 1976. In short, this exchange was necessitated by the competing Federal, State, and private land interests with the Cook Inlet geographic region. As a result, CIRI agreed to take the major portion of its entitlement outside of its boundaries, but in exchange, a key provision was agreed by the Federal and State Governments that certain Federal lands, as they became available within the boundaries of the region, would be conveyed to Cook Inlet Region. Our initial reading of section 5 (a) and (b) of S. 1500 indicates that, as presently drafted, these substantial rights acquired by Cook Inlet Region under the Native Claims Settlement Act and under Public Law 94-204 would be extinguished without any form of compensation. We have made the congressional delegation and the State aware of this problem in the current legislation. As we have relayed it to the State and the delegation, Cook Inlet has no desire to impede the transfer of the Alaska Railroad to the State of Alaska. However, we are equally strong in our resolve that the legitimate rights of our corporate shareholders be protected in any such transfer of the Alaska Railroad to the State of Alaska.

As we have been doing recently, we will continue to work closely with the committee and its staff to develop a way which will assure both the transfer of a viable railroad to the State of Alaska as well as guarantee that the rights of the Cook Inlet Region are protected.

I wish again to thank the committee for this opportunity to testify, and I will be happy to answer any questions you may have.

Senator STEVENS. Thank you, Roy. I am familiar with those provisions, and we will be working with you on those, too. I don't know exactly how they'll come into play in this process, but I think if you're right, we'll have to spell it out a little more clearly.

Mr. HUNDORF. Thank you.

Senator STEVENS. You are next.

## STATEMENT OF DANIEL ALEX, VICE PRESIDENT, LAND OPERATION FOR EKLUTNA, INC.

Mr. ALEX. Mr. Chairman, members of the committee, my name is Daniel Alex. I am the vice president, Land Operation for Eklutna, Inc., and chairman of the land managers association of the AFN. I am speaking today in my capacity as the land manager for Eklutna. I think all Alaskans can be grateful that you are involved in this matter. Having as you do, Senator, the position of assistant majority leader, we can anticipate that the interests of all Alaskans will be protected in the resolution of this matter to a degree which has not commonly been the Alaskan experience.

One of the things that I want to make sure is understood is that Eklutna supports the continued existence of a viable Alaska railroad. We include in that a support of the principle of the extension

of the railroad to Canada, the extension of the Railroad into mining country provided there is adequate attention to the prevention and control of resulting trespass. We wish to point out that the real question concerning the viability of this railroad will concern future State actions about the Railroad. If the State of Alaska desires this railroad to be a success, the State of Alaska will have more than enough capital and a land base of 103 million acres to draw upon to insure that success. If, on the other hand, the State of Alaska does not have the commitment to the future success of the Railroad, there is nothing anyone can put into the bill that would guarantee that success. The point I'm trying to make is that one cannot analyze the viability of the Railroad simply in terms of what the FRA wishes to believe the Alaska Railroad has. We're sure that as you move into the markup of this bill, you'll keep that in mind.

We have several problems with the bill and one of them has to do with what we consider valid existing rights. Now, Eklutna, Inc., has selected some 2,800 acres of the Alaska Railroad as authorzed by the Alaska Native Claims Settlement Act and as drafted. We feel that this would be nullified and we're concerned about that.

I have a bit—a number of pages of my testimony, and rather than read it and take up your time, I would just like to state that I would like to have the balance of it entered into the record. I want to express concern for potential problems with the bill as drafted. Also want to express that we are in support of the transfer of the Alaska Railroad providing that valid existing rights be taken care of.

Senator STEVENS. Well, thank you very much. We will print the complete statement in the record and be glad to study the suggestions that you have made in that statement.

Mr. ALEX. Thank you.

[The statement follows:]

STATEMENT OF DANIEL ALEX, LAND MANAGER FOR EKLUTNA

Mr. Chairman, members of the committee, my name is Daniel Alex. I am the Vice President, Land Operations, for Eklutna, Inc., and Chairman of the Land Managers Association of the Alaska Federation of Natives. I am speaking today in my capacity as the Land Manager for Eklutna. I think all Alaskans can be grateful that Senator Stevens is involved in this matter. Having as you do, Senator, the position of Assistant Majority Leader, we can anticipate that the interests of all Alaskans will be protected in the resolution of this matter to a degree which has not commonly been the Alaskan experience.

In order that there be no misunderstanding of the purpose of our speaking here today, let me say that Eklutna strongly supports the continued existence of a viable Alaska Railroad. This includes supporting in principle the extension of the railroad to Canada and the extension of the railroad into mining country, provided there is adequate attention to the prevention and control of resulting trespass. We wish to point out that the real question concerning the viability of this railroad will concern future State action about the railroad. If the State of Alaska desires this railroad to be a success, the State of Alaska will have more than enough capital and a land base of 103,000,000 acres to draw upon to insure that success. If, on the other hand, the State of Alaska does not have that commitment to the future success of the railroad, there is nothing that anyone can put into this Bill that would guarantee that success. The point I am making is that one cannot analyze the viability of the railroad strictly in terms of what the FRA wishes to believe the Alaska Railroad now has. We are sure that as you move into the mark-up of this Bill, you will keep that principle in mind.

There are problems with the Bill, as drafted by the FRA, in terms of valid existing rights. These valid existing rights include not only Native selections (and we are talking about selections that are historical fact and not some kind of "wish

list") but also potential State selection rights, and unpatented mining claims that may underlie some of these withdrawals, and even some ambiguities respecting the status of railroad lessees; all these are interests not yet ripened into full legal title that would be extinguished. (While Section 3(a) of the Bill says the State must agree to assume railroad leases after it receives the transfer, Section 5(a) will have revoked the leases before the transfer, and there will be nothing left for the State to assume.)

The Interior Department Solicitor has issued an opinion that Section 5 of the FRA Bill is unconstitutional as to Native Selections. Having previously held that position yourself, Senator, you will be familiar with the experience and resources that the Solicitor will have been able to draw upon in reaching that conclusion. Surely this unconstitutionality is also true with respect to any other valid existing rights which may be claimed in lands currently administered by the Alaska Railroad. Our own research comes to the same conclusion. It also tells us what a dangerous precedent this FRA Bill could set with respect to the status of the State selections of the State of Alaska itself, those of other Western states' under their in-lieu rights, or unpatented mining claims. It is a principle which runs counter to the entire western land philosophy. Congress should not take upon itself to revoke Congressional land grants and entry authorizations.

We are sure that upon reflecting on these problems, Senator, you will come to recognize the basic validity of our position respecting valid existing rights of all kinds. The question of how to deal with the matter now arises. Valid existing rights must be protected through the mark-up process. For the sake of the public, valid existing rights should be dealt with in a manner with which claimants of interests in public land are familiar: that is, adjudication by the Department of the Interior. Neither miners nor Native corporations should be obliged to deal with administrators totally unfamiliar with the land programs under which their claims arise. In regard to the general issue of valid existing rights, it is the duty of the Interior Department, which is charged with the administration of Federal land programs, to adjudicate claims and entries of all kinds, whether homesteads, trade and manufacturing sites, mining locations, state selections, or any other kind of claim to the Federal lands there may be. The Department of the Interior should, under this legislation, adjudicate all valid existing rights and the State should not be compelled, by reason of the reverter clause in Section 7, to litigate all such adjudication results. The State should be free to evaluate all these adjudications on their merits and to concur with, or object to, the results as the law and the facts indicate at the time.

Aside from the specific protection of valid existing rights in Sections 5 and 7, it would also be useful in Section 2 to exclude all lands which are subject to valid entries, locations, and selections from the definition of lands to be transfered to the State. In Section 5 itself, the whole of subsection (b) must go, and the second sentence of subsection (a) must also be deleted to be replaced by the valid existing rights language.

In connection with Section 7 and the reverter question, we really think it would be best simply to delete the entire section. This clause in many ways is a gross insult to the State of Alaska and its people. If the Federal government is going to shut down the railroad in any event, and has no real chance of putting it in the hands of an established railroad company that would want to run it, then they are commanding the State to do exactly what they themselves are not willing to do and don't think any business would wish to do. The State must be free to make this railroad viable in any fashion which the State itself chooses, without the narrow focus on particular lands and problems which has characterized FRA analysis of the situation in the past. A second reason why the reverter clause should be altogether deleted is that it attaches a consequence to the collapse of the railroad under State administration that would not be a consequence under Federal administration. In other words, if the Federal government were simply to abandon the railroad tomorrow it is clear that, under existing law, the one entity that would under no circumstances wind up owning the land administered by the railroad is the United States. The State, under the Alaska Statehood Act, and the Native corporations, under the Alaska Native Claims Settlement Act and subsequent legislation, are clearly entitled, under existing law, to pick up all the pieces. However, under Section 7, should the State fail to satisfy the Department of Transportation as to the soundness of its management of the railroad, the land would revert to the United States. Thus the State would be rewarded for having made a good try by being punished well beyond the extent of what would happen if the Federal government simply shut it down now.

If, when the dust settles, the legislation has to include a reverter clause, we think it would be appropriate not to have the clause triggered by the Secretary of

Transportation's determination (based upon discretion and some substantial evidence test) that the reversion should occur. Rather, it should be triggered by facts themselves--not the Secretary's opinion of the facts. Further, the State should be specifically authorized to settle disputes with people holding valid existing rights (as adjudged by the Interior Department), rather than forcing the State to litigate every such claim. Lastly, it should be clarified that the Department of the Interior would continue to adjudicate valid existing rights, unless, Senator, you conclude that that is so obvious a fact in law as not to require specific language.

We are an Alaska business corporation and 99% of our shareholders are citizens of the State of Alaska. We have as much concern with the general State interest in this proposition as anyone else. We agree with, and support, the State's position in this matter, especially supporting the notion that the State must have flexibility to manage this railroad in whatever fashion the State deems best. Happily, the State is in possession of adequate resources to make a go of this railroad and we trust that it will continue to show that interest in the future.

While the next subject is not addressed by the legislation directly, we are aware that the materials prepared by the FRA in the past have expressed grave misgivings about right-of-way problems on Native lands. We think we can bear witness that this issue is something of a red herring. We are aware that the Alaska Railroad and any other railroad has certain needs in connection with the operation of a railroad within its right-of-way and are not aware of any serious differences of opinion between the railroad and ourselves respecting what that means in terms of day-to-day decisions and activities. Daily, without incident, the Alaska Railroad runs trains over land patented to Eklutna. It is our understanding of the law (which we realize diverges somewhat from the Alaska Railroad's beliefs) that the Alaska Railroad and many other railroads traditionally own only an easement interest in their rights-of-way; that the underlying land, in any kind of reversion if the railroad is abandoned, belongs to the person whose land the railroad crosses. This question is, of course, of interest to every person in the State of Alaska who owns land crossed by the Alaska Railroad. It would be unseeming for Congress to declare in any way that the right-of-way of the Alaska Railroad is owned in fee, as this would be expressing an opinion on (at best) a debatable point affecting many miles of track in Anchorage and elsewhere. If the railroad is ever abandoned, it is clear that there would be no particular utility in having a little strip of government property running only through the middle of those lands title to which is derived through a Native corporation. Under existing law there is provision for the deletion of easement interests upon cessation of use.

We are confident, Senator, that the mark-up process will result in product which transfers the Alaska Railroad to the State with as much flexibility in the State as possible and without the delays that would be associated with an effort to extinguish vested property rights along the way. Thank you for giving us the opportunity to appear before the Committee today and to be heard.

## STATEMENT OF WINNIE B. ATWOOD, CHAIRMAN OF THE BOARD, TOGHOTTHELE CORP.

Ms. ATWOOD. Mr. Chairman, my name is Winnie B. Atwood, chairman of the board of Toghotthele Corp., which is in the Doyon region. Toghotthele does not object to the transfer of the Alaska Railroad to the State of Alaska. However, Toghotthele does object to section 5(a) of S. 1500 which provides that certain of our land rights would be revoked. Section 5 of this bill nearly 10 years after Congress passed the Alaska Native Claims Act as amended and nearly 6 years after the native corporations were required to file their selection applications under ANCSA, attempts to exclude from selection lands otherwise validly selected under ANCSA, including lands under section 3(e) of the act.

ANCSA gave Toghotthele both the right and the obligation to select all available lands around the village and within the "core township" withdrawal area by timely filing selection applications. As of this time, these valid selection applications await only the Department of Interior's administrative processing (largely the identification and adjudication of third party interests).

Further, section 12 of ANCSA provided that Toghotthele "shall select, in accordance with the rules established by the Secretary" its acreage entitlement, which has also been accomplished. "Immediately" after selection, pursuant to section 14, the Secretary was required to convey these lands. Administrative difficulties through no fault of Toghotthele or the other corporations have resulted in only a portion of the corporation's total entitlement being conveyed.

The discussion above clearly points out the Secretary of Interior is under the obligation to convey these lands subject to valid existing rigths. Now, however, under the language of section 5 of S. 1500, Toghotthele would be summarily deprived of valid 3(e) selection rights in these lands.

Section 3(e) lands are really little different than any other lands which the corporation has selected under ANCSA. With 3(e) lands, a Federal agency has a valid existing right to the smallest tract enclosing land actually being used in connection with the administration of a Federal installation. The Secretary is required to make such determination after extensive public comment, including comments from the Alaska Railroad and native corporations, such as Toghotthele, pursuant to established regulations.

Toghotthele is not seeking to take the Alaska Railroad 3(e) lands from it. All it seeks is its rights under ANCSA to conveyance of lands which are outside "the smallest practicable tract actually being used" to administer the Railroad.

There are presently pending applications by the railroad to determine its land rights under section 3(e) of ANCSA. There is a formal 3(e) review under the regulation for lands selected by Toghotthele (see copy of BLM 90 day letter which is attached). Toghotthele requests that this formal review process be allowed to continue and be completed in accordance with the existing regulations, not that the railroad's valid existing right in these lands be extinguished. In other words, all the corporation asks is that the determination as to the extent of these rights required under ANCSA and the regulations be made.

Under ANCSA, the corporation has the obligation to select certain lands and the Secretary has the obligation to convey those lands.

A selection application covers a particular parcel of land. The corporation has vested rights in that parcel. It is a well-settled principle of real property law that the Government cannot deprive a landowner of his land without compensation.

Toghotthele's selections are not mere claims. They are valid existing rights which cannot be extinguished without just compensation.

Recognition of Toghotthele's valid existing rights in these lands and the orderly determination of these rights under section 3(e) of the existing regulations will allow it to meet with the State to resolve many of the conflicts between Native corporations, including Toghotthele and the Railroad. Toghotthele would favor an express provision to this effect in the bill. Thank you, Mr. Senator.

Senator STEVENS. Thank you very much. We will print the exchange of correspondence that you have attached to your statement, too. I appreciate that very much.

Mr. Blatchford.

## STATEMENT OF EDGAR BLATCHFORD CHAIRMAN OF CHUGACH NATIVES, INC.

Mr. BLATCHFORD. Thank you, Mr. Chairman. My name is Edgar Blatchford and I am chairman of Chugach Natives, Inc. We thank you for the opportunity to give our thoughts on the transfer of the Alaska Railroad from Federal ownership to the State of Alaska.

Chugach Natives, Inc., is the regional corporation established pursuant to the Alaska Native Claims Settlement Act of 1971. Our regional boundaries encompass the southeastern portion of the Kenai Peninsula and the Prince William Sound. We have four major Alaskan ports in our region—Seward, Whittier, Valdez, and Cordova. The Alaska Railroad serves two of these ports—Seward and Whittier.

Many of our shareholders are uniquely familiar with the Alaska Railroad and realize the importance it has on our State. Many of us remember the impact on the Alaska economy that the 1964 earthquake had when the Port of Seward was destroyed and Whittier damaged. We feel that the railroad is essential to the growth and future of Alaska's transportation system. We feel S. 1500 is a good bill, and compliment you for your efforts, however, we are respectfully opposed to sections 5 (a) and (b).

We are opposed to this section because it revokes all Native claims to Alaska Railroad lands which have not vested and prevents Alaska Railroad lands from becoming available for potential selection. Further, we are adamantly opposed to section 5(b)(4) which singles out Chugach Natives, Inc., by stating that railroad lands are not available for conveyance under section 1430 of the Alaska National Interest Lands Conservation Act of 1980.

Under the present situation that exists today, although not clear, Alaska Railroad lands, which are not being used for railroad purposes, are potentially available for selection by qualified native groups. Pursuant to ANILCA, section 1430, Chugach Natives, Inc., has identified several areas for possible conveyance to Chugach. If S. 1500 is allowed to become law with section 5 intact, then all our claims and potential claims would be wiped out.

We at Chugach are disappointed. We had thought, that with the passage of the Alaska National Interest Conservation Act of 1980, we would be allowed to continue the process of fulfilling our land entitlement as promised by Congress in 1971. We see section 5(b)(4) s eroding our selection rights which have already been granted us in 1971 and 1980. We are fearful, that even before a single acre has been conveyed to us, as promised by Congress, our selection rights will be severely diminished.

Chugach Natives, Inc., is a small regional corporation. Our opportunities are limited. We see, even before we have been able to build a solid foundation for our shareholders, efforts to further limit our rights. Therefore, we have no other recourse but to oppose S. 1500 as written.

We respectfully urge that section 5(b) of S. 1500 be deleted and that any qualified native group be allowed to pursue their selection rights through the present processes.

Once again, Mr. Chairman, we thank you for allowing us this opportunity to present our views. Thank you.

Senator STEVENS. Thank you.

I understand what you're saying. That might be the impact of that section, and we'll study it. That was not the intention. We did not draft it for that purpose. We will study this with you and work with you and your people as the bill proceeds.

Thank you all very much. We appreciate your statements and we'll be working with all of you. We are happy to welcome Congressman Young to the hearing. Our next witness is Mr. Al Swalling. Will you proceed as you wish, please?

## STATEMENT OF AL SWALLING

Mr. SWALLING. My name is Al Swalling. I appreciate the opportunity to appear here today as a private citizen interested in the future of Alaska and cognizant of the urgent need for the State to have the best possible surface transportation system to adequately serve the civilian and defense needs of Alaska and of the Nation.

I came to Alaska in 1929 to work on the Old Copper River and Northwestern Railroad, made so famous in Rex Beach's "The Iron Trail." This standard gage railroad ran from Cordova to Kennecott, site of the rich copper deposit. In 1938, it was my sad chore, as bridge foreman to "mothball" the section houses, roundhouses, and other structures; and on the last train out, drain all the water systems. Some years later, the track was torn up and the rails sold for scrap. Should Senate bill 1500 be implemented in its present form, I am convinced that someone will have to do a similar decommissioning and salvage job on the Alaska Railroad.

I have had a continuing interest in attempts to extend the Alaska Railroad. As the one member from Alaska, I was appointed to President Eisenhower's Alaska-International Rail and Highway Commission. In 1967, Governor Hickel conceived the idea of the "North Commission." It was authorized by the legislature in April 1967. I served as its chairman. I offer its final report as exhibit A.[1]

The conclusions of the commission as they appear on page 11 of exhibit A are, in my opinion, still very valid.

The points were:

1. That the Governor advise the Federal Government that, inasmuch as some 80 percent of Alaska was still federally owned after Alaska land selections are completed, the State of Alaska firmly believes that the principal responsibility for the development of Alaskan resources continues to rest with the Federal Government. Therefore, the Federal Government not only should retain the Alaska Railroad, but also should extend the Alaska Railroad north across the Brooks Range to the oil and gas fields and west to the hard mineral areas on the south side of the Brooks Range.

2. That the Governor's office approach the Federal Government with the argument that the sale of the Alaska Railroad to a private operator would not be in the best interest of the State or Federal governments for reasons touched on earlier. It will not be difficult to prepare an argument showing what increased freight costs will do to the cost of operating State and Federal governments and to the development of the State.

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[1] The exhibits are in the committee files.

3. Should the arguments as outlined in 1 and 2 above fail to prevail, the office of the Governor should pursue with diligence the argument earlier stated that the railroad in its present form, together with all its rights, properties, and perogatives, be transferred without exchange of funds to the State of Alaska because of the congressional intent in the Omnibus Act. If the Governor is successful in this action, the authorities presently contained in the Alaska Railroad Enabling Act and presently administered by the Secretary of Transportation should be transferred to the office of the Governor of Alaska.

4. In addition to the above recommendations which are directly related to the Alaska Railroad, the North Commission recommended that a transportation authority be established as soon as possible. This authority should have broad powers enabling it to develop and operate all modes of transportation and related facilities.

I would like to preface my formal testimony with the statement that as a banker, construction contractor, and a manufacturer, I am 100-percent supportive of our President's policy of getting government out of activities that should more properly be kept out of the Federal domain. This effort is long overdue.

I am thoroughly in favor of the economies that can be accomplished but I do want the economies to be net rather than illusionary. As a case in point, this year the Alaska Railroad disposed of its river operation and its terminal facilities at Nenana to the city of Nenana. This year the town of Nenana raised the wharfage rate on bulk petroleum by 300 percent. As 75 percent of the bulk petroleum on the river is used by the U.S. Air Force, monetary relief to the Federal Government is questionable. I would like to lift a quotation from the foreword written by our beloved original senior senator from Alaska, Senator E. L. "Bob" Bartlett. He wrote this foreword for a book on the Alaska Railroad published by the Praeger Library of U.S. Government Departments and Agencies. In this forword, he describes the Alaska Railroad as "a vital Alaska transportation artery—one that proved itself and paid for itself many times during World War II." As a matter of record, the total congressional appropriations to the Alaska Railroad total less than $244 million as of June, 1981. As an experienced construction contractor, I think I am qualified to state that the cost of building Fort Wainwright, Eielson Air Force Base, Clear Site, Fort Richardson, and Elmendorf Air Force Base without the Alaska Railroad would have been many times larger than the total cumulative appropriations to the Alaska Railroad. Actually, the net cost to the Federal Government is a minus figure. To place the matter in further perspective, more than one and one half billion Federal dollars have been provided for highways in Alaska and with the exception of Fort Greeley, no transportation economies would have been achieved by the Federal Government had it not been for the stabilizing effects of the tariffs of the Alaska Railroad. Twenty-three percent of the Alaska Railroad's tonnage is military cargo. The extent State ownership results in increased freight rates, 23 percent of such increase will be borne by the Federal Government. At this point, I would like to introduce into the record as exhibit "B", a letter dated July 8, 1981, from the Federal Railroad Administrator to Senator Slade Gorton, the junior Senator from Washington.

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It is interesting to note that the Federal Railroad Administrator's answer was an answer to a letter written by the junior Senator from Washington even prior to the printing and introduction of S. 1500 in the Senate by Senator Stevens.

Mr. Chairman, from reading the Federal Railroad Administrator's letter to Senator Gorton, it is not difficult to deduce what Senator Gorton was requesting an additional five restrictive covenants be incorporated into S. 1500. I think I can reconstruct them as follows:

1. That a mandatory 5-year operating requirement be in the bill. This would be a hardship on the State and the Federal Government. S. 1500 already contains a reversionary clause to protect the Federal Government.

2. A clause prohibiting the State to use transferred Alaska Railroad property in water and motor carrier activity.

3. A covenant requiring that every rate of the State-owned railroad cover 150 percent of variable costs. Such a requirement would be far more restrictive than standards for reasonable rates.

4. A covenant requiring the State Railroad to disclose cost and revenue data that is not required of other carriers.

5. A request for the relaxation of the normal standards for granting injunctive relief in protesting rates.

Mr. Chairman, if I am wrong in these deductions, you can determine so by simply asking Senator Gorton for a copy of his letter to the Federal Railroad Administrator.

Even before hearings on S. 1500 have begun, indeed even before S. 1500 was printed, transportation interests, both motor carrier and the unions representing the motor carrier's employees, had begun beseiging the junior Senator from Washington for special covenants that would assure that the comtemplated State Railroad will not be a stabilizing factor in ratemaking but rather a paper tiger bowing to the wishes of outside carriers and the representatives of the employees of such carriers. I am happy that the Federal Railroad Administrator refused every one of the Senator's requests. However, these same Washington-based carriers that inspired Senator Gorton's request to the Federal Railroad Administrator have operations in Alaska and these carriers and employees are constituents of Alaska's legislature and these same pressures may well build against the legislature and the executive governing board of such a State Railroad and the results could well augur ill for the Alaska shippers. The letter from the Federal Railroad Adminstrator describes the Alaska Railroad as an intrastate railroad. Technically, he is correct, but the rates of the Alaska Railroad that interest most Alaska shippers are interstate in nature.

I strongly urge that before any final decision is made regarding the transfer, consideration be given to the concept embodied in S. 2514 as introduced by Senator Bartlett on August of 1959 in the 86th Congress, First session. This bill was a proposal to incorporate the Alaska Railroad as a Federal corporation. The concept roughly paralleled the process whereby the Canadian Government formed a crown corporation and gathered up the small foundering private railroads across Canada and formed the Canadian National Railways, one of the finest systems in the Western world. In this way, they were able to stabilize rates all over Canada, and retain control

of transportation costs in the face of the privately owned Canadian Pacific Railroad, a company, incidentally, with large U.S. ownership.

Should the decision of the Federal Government to divest itself of the Alaska Railroad in favor of the State of Alaska prove to be irrevocable, I strongly urge that in fairness to the State of Alaska and its residents, that section 2, subsection (1), (2), (3), and (4) be modified to transfer these unexercised right-of-way provision and the rights described in subsections, 2, 3, and 4 be transferred to the State of Alaksa. In my opinion, if this is not done, the transfer of the Alaska Railroad to the State of Alaska will become a paper exercise that will be disasterous to both the State and the Federal Government. The results will not be felt immediately in the Anchorage area, but will soon pose real obstacles in the interior of Alaksa, and Fairbanks will realize all too late what has happended to its economy.

At present, the ownership of more then 81 percent of Alaska is vested in the Federal Government. With such ownership, there should be responsibility. Even after the native land settlement is complete and the State has received its full entitlement of 104 million acres, the Federal Government will still have locked up more than 60 percent of Alaska's most desirable land and resources. It only seems equitable that the State of Alaska should inherit the unexercised right-of-way presently reserved to the U.S. Government on the basis of trading on an acre-for-acre basis, State entitlement land for Federal land used for the Railroad right-of-way.

Mr. Chairman, it's been a pleasure. Thank you.

Senator STEVENS. Thank you very much, Al. I am sort of confused by the reasons for asking that section 2 be changed. Paragraph (1) of section (2)(b) is the right-of-way provision I mentioned before that reserves to the Federal Government rights-of-way for construction of the Railroad, or telegraph or telephone lines across the patents that have been issued by the Federal Government. In other words, patents have already been is ued to Alaskans, and that old act reserved the right of the Federal Government to come take the land back for the railroad or telegraph or telephone lines.

Mr. SWALLING. Yes.

Senator STEVENS. Now, the State repealed that for highway lands and asked the Federal Government to repeal the 1947 act once before. This has nothing to do with reserving rights-of-way across Federal lands. It refers to rights-of-way across 3 lands that are privately owned by the State of Alaska citizens. Paragraph (2) refers to the right of the Secretary to exercise the power of eminent domain. The State of Alaska has its own power of eminent domain.

Mr. SWALLING. I think my emphasis is that I want to be sure that it is contained in one or the other or covered in the transfer if it is transferred to the State so that it doesn't get lost in the shuffle. That's my concern.

Senator STEVENS. I agree with that. The third paragraph deals with the situation where on some of the railroad's lands, there are military facilities. There's a blending in some areas where you have military spur lines, for example at Eielson and into Fort

Wainright. This paragraph allows the Secretary to retain in Federal ownership, those lands which are necessary to carry out Federal functions other than those of the railroad.

Mr. SWALLING. I don't think I have any quarrel with that.

Senator STEVENS. I don't think we would either.

The last paragraph deals with the money that's in the revolving fund that is necessary to satisfy the obligations that the State does not assume at transfer which are obligations of the Railroad. So, I think I would ask you to review that recommendation that we modify those provisions. In my opinion, those four provisions are absolutely essential to this bill, if we're to be fair with Alaskans, and at the same time preserve those things that are necessary, for things like the military in terms of the railroad facilities at Eielson, Fort Wainright, and Fort Greeley.

Mr. SWALLING. I have no quarrel with that.

Senator STEVENS. That's why they were there.

Mr. SWALLING. But I will review that.

Senator STEVENS. All right. Thank you.

Have any questions?

Mr. YOUNG. Good job.

Senator STEVENS. Thank you very much.

Incidentally, with regard to Senator Gorton's letter, it was common knowledge throughout the Congress that we were working with DOT on this bill. We had furnished the State of Alaska with a copy of the draft. We had furnished the Department of the Interior with a copy of it. I'm sure that it was no surprise that the Senator from Washington obtained a copy of the draft. He is also a member of the Senate Commerce Committee. So, we all knew that there were those proposed amendments. Like you, I'm glad that the DOT rejected those amendments. However, I do expect to see those amendments again as this bill progresses. You know how that is. We'll face them again and again, I think.

Mr. SWALLING. One of the reasons I wanted to mention it was you can be sure that we will watch it very carefully.

Senator STEVENS. Good. Thank you. I appreciate your help.

I've been called to a meeting of the Land Use Council. Congressman Young has agreed to chair a portion of these hearings and the staff will stay with him.

Mr. YOUNG. The next witness will be Jim Davis of Sea-Land.

## STATEMENT OF JAMES DAVIS, GENERAL MANAGER, ALASKA, SEA-LAND SERVICE, INC.

Mr. DAVIS. Mr. Chairman my name is James Davis. I'm General Manager, Alaska, for Sea-Land Service, Inc., an ocean common carrier with facilities located in Kodiak, Fairbanks, and Anchorage. Sea-Land is most appreciative of the opportunity to appear today in support of S. 1500, a bill that transfers the railroad to the State from the Federal Government.

Sea-Land Servic, Inc., is the world's largest containership operator and is the only U.S. major flag liner carrier in foreign commerce operating without U.S. Government operating subsidies. An affiliated company, Sea-Land Freight Service, Inc., is a certified ICC motor common carrier for the Seattle, Wash., area and numerous points within and without the railbelt in Alaska.

Sea-Land pioneered year-round water service to Anchorage, Alaska, in 1964 and has continually served Anchorage with a minimum of semiweekly sailings since that time. Presently, Sea-Land itinerary has our line-haul ships sailing regularly between Seattle, Wash., and the Alaska ports at Kodiak and Anchorage. Sea-Land uses another of its containerships, the *Aleutian Developer,* to provide connecting service between Kodiak and ports in the Aleutian chain. Through arrangements with other carriers, additional ports are served over Kodiak.

Sea-Land also maintains freight terminals at Fairbanks, Kenai, and Anchorage. Moreover, Sea-Land Service has an interline agreement—agreements with numerous independent motor common carriers located in Alaska for the purpose of providing over-the-road service within the State

Sea-Land's investment in this trade currently exceeds $35 million. As can be seen by that figure, Sea-Land is completely committed to the Alaska Service which it provides year-round statewide transportation with the exception of the southeast panhandle to the citizens of Alaska.

Sea-Land supports S. 1500, which provides for the transfer of the Alaska Railroad to the State of Alaska. The Alaska Railroad clearly constitutes an essential link in the State transportation infrastructure on which Alaska's present commerce and future development depends. Sea-Land, too, constitutes a part of that transportation infrastructure, and as a competitor—and as such, is a competitor of the Alaska Railroad. The State needs both a modern, efficient, profitable railroad as well as the all-water competitive service offered by Sea-Land and other nonsubsidized water carriers. For this reason, Sea-Land offers two amendments to Senate bill 1500 which would assure that competitive activities of the Alaska Railroad with the all-water carriers shall be maintained on a commercial basis. For these reasons, Sea-Land requests that section 3(a)(1) be amended to read as follows:

> The State has agreed to operate the rail properties with Alaska Railroad as a rail carrier intrastate and interstate. The State has further agreed that it shall not utilize or operate the rail properties directly or indirectly as a water carrier or publish or maintain tariffs, rates or charges for water carriage in commerce between Alaska and the 48 contiguous States and intermediate points. Utilization or operation of the rail properties by the State in such commerce in combination with or as a participant in through rate water tariffs published and maintained by water carriers must be equally available in the Railroad's rates or divisions shall not give preference directly or indirectly or by commodity to a port or a carrier by rate or division differential.

In addition, we suggest a new section 5(c) should be added as follows:

> The State-owned Railroad shall be operated in strict compliance with the terms of the certification of the Secretary and agreements by the State giving rise to such certifications described in section 3 of this act.

The purpose of these amendments is twofold. One, they provide that the State will directly or indirectly operate the Railroad as a water carrier in interstate commerce and two, in the event the Railroad enters into a combination of through rates with a water carrier, such must be equally available to all water carriers and such through arrangements shall not give preference to any particular port or any particular carrier.

The southernmost marine terminus of the Alaska Railroad is Whittier from which it thence serves Seward. To the north, the Railroad serves Anchorage and ultimately Fairbanks and intermediate points. Anchorage has a well-developed port which has year-round water service by Sea-Land and one other carrier from Seattle-Tacoma, Wash. Preferences granted by the Alaska Railroad to water carriers serving Whittier would adversely affect the Port of Anchorage and the services of the water carriers providing direct call services to Anchorage. The proposed language would prohibit such preference and would assure healthy, competitive services to Anchorage and all points served by the Alaska Railroad.

Eighty-five percent of the people living in Alaska are in the area served by the rail belt. In addition to competing for this traffic, Sea-Land serves the entire State except the southeastern through a combination of containership service and interline arrangements with numerous independent motor common carriers. It critical that competitive commercial service be maintained for the 85 percent of the cargo destined for the rail belt area. The two amendments that Sea-Land proposes would assure the commercial competitive atmosphere which is essential to the future of Alaska's economy and healthy competition between the Railroad and water services.

Sea-Land supports S. 1500 transfer of the Alaska Railroad to the citizens of Alaska. The Railroad is a valuable asset and an important element in Alaska's development. Other private sector's transportation services are also vital to the State and must rely on sound commercial competition to properly serve Alaska. The amendments we propose to S. 1500 would provide such healthy competition.

Thank you.

Mr. YOUNG. Thank you, Jim. I think the question of rates and through routes is going to be one of the more controversial parts of the legislation. I know that you have a great deal of interest, as do many other people involved in transportation, in having equal competition. Yet, your amendment would, seem to preclude the Alaskan Railroad as run by the State or whoever receives it, from interfacing other carriers, would it not?

Mr. DAVIS. I think it mentioned in there that should that happen, that the divisions that were entered into would be open and would be available to all water carriers.

Mr. YOUNG. I'm pleased that you have recommended some amendments, and I understand where they're coming from. I think there's going to be, as I'm sure Senator Stevens has mentioned, some changes in this bill before it's enacted. So, we'll be hearing from you and all those other carriers who are directly interested in the State structure. I'm sure I'll be hearing from you and your other people back in Washington, D.C., regarding your suggestions. I am pleased to note that you are supportive of the continuation of the Railroad, and I think you will play a major role. I want to thank you for your testimony.

Mr. DAVIS. Thank you.

Mr. Young. I think the next witnesses are part of a panel, the Alaska Truckers Association Panel.

If you would first identify yourselves, and then decide who goes first.

Ms. ANDERSON. My name is Nina Anderson.
Mr. GRAHAM. Doug Graham.
Mr. BARBER. Bruce Barber.
Mr. FRENCH. Ted French.
Mr. Young. Who is going to be the leadoff witness?

## STATEMENT OF NINA ANDERSON, VICE PRESIDENT OF OPERATIONS BIG STATE MOTOR FREIGHT, INC.

Ms. ANDERSON. Mr. Chairman, Senator Murkowski, ladies and gentlemen: My name is Nina Anderson. I am vice president of operations for Big State Motor Freight, Inc., a trucking company with intrastate authority for general commodities, and interstate authority within Alaska.

My company's greatest concern is that, with the advent of the State entering the transportation industry, it may decide to enter the trucking industry as well, with large subsidies from the State coffers, effectively fixing rates at a nonprofitable rate and putting private and unsubsidized businesses such as ours out of business.

While at the onset of such ratecutting activities, I feel that the politicians could sell this tactic to voter/consumers, knowing, of course, that you're not politicians and wouldn't do that, but some of our State people might, on the basis that there would be great savings to them as the voters and consumers. The overall effect of such entry would be that private companies would be forced out of business and the then transportation public utility would proceed to raise rates far beyond those that have been dictated by competitive practices in the private sector.

It is imperative that, if and when the Alaska Railroad is transferred to State ownership, the enabling legislation at the Federal level requires:

That the State-owned railroad set rates only through competitive means with the other motor and water carriers that are privately owned, that it has the requirement of buying and paying for its capital equipment, as well as earning profits and paying taxes.

2. That the State railroad not be allowed to engage in predatory pricing policies that would reduce rail rates below that of privately owned trucking companies that operate on parallel routes. It should be subject to the same financial reporting practices and financial scrutiny as are private water and motor carriers, today.

What I'm really asking is that the State be prohibited from entering other commercial modes of transportation, should it take over the railroad, that is, water and trucking. And I think that the Federal people, in considering this enabling legislation, should be aware of the fact that the State has already looked at going into the air carrier business. We in private industry, want to stay there and we don't want to be priced out of the business by railroad that has subsidies that never quit.

Thank you.

Mr. YOUNG. Thank you. I can assure you that as long as I'm sitting in the House of Representatives, there will be competitive rates. We're not in this business to run anybody out of business.

Ms. ANDERSON. No, I'm sure that's true, but I really am concerned and I think we, in the trucking business, are concerned that the legislation coming down states that.

Mr. YOUNG. I'm well aware of this. As I mentioned to Mr. Davis, the rate question is probably going to be one of the most difficult ones in the whole legislation. While I cannot speak for the Senators, I can say for myself that on the House side, we are going to scrutinize what is being proposed. The final legislation is not going to be detrimental to those people in direct competition with subsidized carriers. I can assure you of that.

There's one other thing I would like to say for the benefit of the listening audience; that is, it's a long ways between first grade and graudation. We're just here to listen, and you're bringing out some good points. We'll make sure that your points are considered.

Nest witness, please.

## STATEMENT OF DOUGLAS GRAHAM, VICE PRESIDENT AND GENERAL MANAGER OF MAMMOTH OF ALASKA

Mr. GRAHAM. My name is W. Douglas Graham and I am presently vice president and general manager of Mammoth of Alaska, Anchorage, a general commodity carrier certificated by ICC and Alaska Transportation Commission. Mammoth of Alaska, Inc., is an Alaska corporation which employs 75 people with terminal and agent operations in Anchorage, Fairbanks, Kenai, Seward, and Homer. Mammoth operates 60 tractors, 35 trailers, and other related equipment. Capital investment for property and equipment is in excess of $4 million. Highly trained and qualified personnel performing services to the public represents an unrecorded asset to the corporation. Mammoth of Alaska, Inc., revenues in 1981 are estimated to be in excess of $10 million with profits to be very minimal, if any. The financial condition of Mammoth is improving, but we feel that a subsidized railroad, an Alaska-owned railroad, could and would be disastrous to this corporation and its employees. Profits are extremely difficult to obtain under the best of conditions and I would refer you to the profit history of the present Alaska Railroad which has been subsidized.

The Alaska Railroad also, historically, has had a difficult time shoring profits. The difference has been taxpayers, individual and corporate have paid the bill by large subsidies granted by the U.S. Government of $250,000,000 since the inception of the Alaska Railroad. I am somewhat disillusioned by the economics of transferring a loser from the Federal Government to the State Government. If the Alaska Railroad was such a good deal, why have other corporations been reluctant to buy it and operate it as any other corporation, reporting the operation to a Board of Directors and responsible for profits to maintain its rightful place in the competitive market. There is no indication in Senator Steven's present bill, S. 1500, to insure that subsidized railroad transportation will not continue to be a reality in the marketplace of Alaska. No protection has been given to private investors and its employees in the present bill. The investment of these taxpaying and job-providing companies represents millions of dollars. This investment is only secured by the abilities of prudent management with no hope or promise of a quicky subsidy by Uncle Sam or Uncle Jay. My position is that the transfer of the Railroad to the State of Alaska should so state that the Railroad be operated with no subsidy, and

that it be operated in the same manner as any other transportation mode in Alaska.

My recommendation is that the Railroad be operated by a Railroad Commission mandated by Congress to conduct the business of its operation just like any private invested corporation. Local political power exerted in operating the Railroad will ultimately be disastrous to the whole economy of Alaska with prejudicial and discriminatory ratemaking. The Alaska Railroad cannot supply the demands for service that is required by the ever expanding market in this State and yet, in the current bill, no consideration has been given to private investors, thus creating a high probability that it, the Alaska Railroad, could very well be the only mode of transportation left at the end of this scenario.

I believe, Mr. Young, that you are obligated to the taxpayers and voters to insure the protection of all parties to which this transfer influences and my company and its employees are going to be very disappointed if you do not represent all the people of Alaska in this transaction. Respectfully submitted.

Mr. YOUNG. Thank you, Doug.

Next witness.

## STATEMENT OF BRUCE BARBER

Mr. BARBER. Good afternoon, Representative Young. My name is Bruce Barber. I've been a resident of Alaska for almost 35 years now dating back to 1947.

My concern about the transfer of the Alaska Railroad from the U.S. Government to the State covers two areas.

At present, I am employed by Lynden Transport, Inc., as an owner-operator trucker. This means that I own and drive my own tractor delivering commodities, freight loads and so on within the State of Alaska.

I am concerned that the ownership of the Railroad by the State will make for unfair competition between the Railroad and the trucking companies in the State. This is due primarily to the ability of the Alaska Railroad to cut rates and impose financial hardships on the trucking companies but continue to operate with the aid of the State funding which, of course, is not available to us.

This, then, can jeopardize my employment due to the above-mentioned competition. I doubt that the State will offer me any funding in the event that I should get into difficulty with my little one-man business.

So, in effect, I am asking, what does the future hold for the trucking industry in Alaska and what effects will the State-operated Railroad have upon it.

Next, as a concerned citizen, I wonder how much money will be spent on this venture in the way of repairs, new equipment and so forth. How much has the Federal Government allowed the track and various railroad equipment to deteriorate over the years which, of course, the State of Alaska will have to provide money for this equipment. I have heard, via the grapevine, that it may amount to a considerable sum. I'm sure you're much more well informed on that than I am.

It seems to me that if the Federal Government considers the Alaska Railroad as a losing proposition and wants to dispose of it,

the State is just taking over this very same loser and will continue to pour money into it for all time.

It would seem that much, much serious thought should be applied to this undertaking with regard to the above questions.

Thank you very much for the opportunity to offer some thoughts from a very small one-man business.

Mr. YOUNG. Thank you very much.

## STATEMENT OF TED FRENCH

Mr. FRENCH. Congressman Young, my name is Ted French. I'm an owner-operator with Weaver Brothers, Inc. within Anchorage.

Prior to any transfer of ownership, operation and control of the Alaska Railroad from the Federal Government to the State of Alaska, serious consideration should be given to the role that a State-owned railroad is expected to play within the overall transportion mix available within the State of Alaska. Today, the State is well-served by strongly competitive water and motor carriers providng service to, from, and within Alaska. There firms are privately owned and receive no subsidy from the State or Federal Government.

There are serious concerns regarding the impact State ownership, operations and control of the Railroad could have on the privately-owned and unsubsidized trucking firms in Alaska. These concerns should be addressed in a manner which will protect the future integrity of privately-owned carriers in providing service for cargo movements between the Lower 48 and Alaska and within Alaska.

The State-owned Railroad must not be allowed to become a subsidized trucking company. Federal subsidy of the Railroad has removed any necessity for the Railroad to recover its capital costs from its freight revenues. If the Railroad is allowed to enter into the water-motor service and use its facilities so as to artifically impact the level of rates which would otherwise be set by competition among the unsubsidized privately-owned carriers, then the future of common carriage by water and truck to Alaska from the Lower 48 by the private sector will be seriously jeopardized.

It is essential that if the State-owned Railroad competes with water and motor carriers, it must do so in a way that allows rate levels to be set through vigorous competition with the privately-owned carriers that have the requirement of buying and paying for their capital equipment, as well as earning a profit and paying taxes.

A State-owned Railroad should be required to finance the operating costs of its fare box and not rely upon the State for operating subsidies.

Currently, the Alaska Railroad published rates for water service for the Lower 48 through Whittier to Anchorage and Fairbanks, in direct competition with the water/motor service provided by various carriers. Last year, the Alaska Railroad started cutting their rates on key commodities substantially below the private carriers' rates. With transfer of the Alaska Railroad from Federal ownership and operation to the ownership and operation by the State of Alaska, there is the risk that the State could utilize the rail proper-

ties in a manner that will further jeopardized the interstate water and motor carriage business

The Railroad msut not be allowed to become a trucking company. The new ICC regulations, adopted February 19, 1981, allow railroads to move freight beyond the railroad if the trailer or container was moved by rail on a flat car. This move can be made without ICC authority. We need to be certain that a State-owned Railroad does not become a subsidized trucking company.

Continuation of the "contract rates" that utilize subsidy dollars to compete unfairly with private transportation modes must not be allowed under a State-owned and operated rail system.

The State-owned Railroad must not be allowed to instigate predatory pricing policies that would reduce Railroad rates below that of competitive trucking companies that operate on parallel routes.

The point is that no privately owned company which is unsubsidized can possibly compete sucessfully against a competitor who incurs no cost for its assets, is immune from the anti-trust laws, is not required to earn a profit or pay taxes, and is subsidized by taxpayer dollars.

I thank you very much.

Mr. YOUNG. Thank you. I just want to ask one question. You make a point there. That's what we have got right now, is it not true?

Mr. FRENCH. It's pretty much so, sir.

Mr. YOUNG. So, if we were to have a transfer, you would support that if the rates were competitive and they weren't subsidized directly against you?

Mr. FRENCH. Right.

Mr. YOUNG. That could be done at the State level, then, instead of the Federal level.

Mr. French. It's the same thing. Of course, we've been trying to change that for a long time.

Mr. YOUNG. You don't have any objections to the transfers, if the railroad is transferred with legislation that make it competitive?

Mr. FRENCH. That's right. Including the water and ali the routes.

Mr. YOUNG. I understand that.

Mr. GRAHAM. I think, Congressman Young, our concern is that in the transfer itself, once it becomes property of the State, I think we're a little bit nervous about that operation, and what we're trying to say to you, that in the transfer, there should be some mandates to the State that we just can't let those boys down in Juneau play the crap game with us, you see?

Mr. YOUNG. I appreciate that comment. We have some State legislators in the audience. I understand what you're saying. I'm on the caboose of this train right now. The two engineers are not here. But I personally think that the legislation providing for the transfer of the Railroad should have some type of written stipulation regarding rates, so as to protect the local politicians from the political pressures and the pressures of consumer advocates to lowering their rates. Frankly, such pressures would result in the subsidization of the railroad to the detriment of industries such as your own and the water industry. I'm sure the Senators are very much aware of this and I'm very much aware of it, so I do appreciate your comments.

I again want to stress the fact that your type of testimony is very beneficial to the legislative process.

Mr. GRAHAM. One other comment I would like to make. I think certainly that no upstanding citizen of this State would like to see the Railroad sent down the tube. You know, it's a valuable asset to the State, has provided a service here. I think that, you know, basically, our fears are unequal type competition and there's a lot of bucks in Juneau, you know, and we would just like to see it come through with some protection.

Mr. YOUNG. Well, I do thank you again, all of you. You did a fine job for your association. Our next witness is Mr. Ron Hauver.

## STATEMENT OF RON HAUVER

Mr. HAUVER. Mr. Chairman, my name is Ron Hauver. I'm an attorney. My practice is limited to transportation, and I'm a member of the Resource Development Council, a council I'm sure you're familiar with. There's approximately 10,000 members. It's a State-wide association which reviews bills that are presentable in Juneau and in Washington, D.C., to determine what impact they may have on the development of Alaska's resources. We applaud the efforts of our Senators and of yourself, Congressman Young, in presenting legislation to transfer the Railroad to the State. We support that effort and we appreciate the opportunity to participate in that process of the development of this important legislation.

We have submitted to the senators, testimony in detail of the position of the Resource Development Council. That testimony—does make four policy points which are the policy position of the Council and of those, I would beg your indulgence while I read them into the record.

That the State of Alaska take the necessary steps to acquire ownership of the Alaska Railroad from the Federal Government.

That the Alaska Legislature enact legislation establishing an autonomous authority, separate and apart from existing State agencies, to act on behalf of the State.

Third, that the operation and management of the Railroad is placed with a qualified private enterprise firm, and

Fourth, that it is the ultimate goal of RDC, as soon as it is economically feasible, for the Alaska Railroad to be placed in private ownership.

Basically, our plea is that the Federal Government, in making this transfer, not cripple the Railroad's ability to function before and during the transfer, or saddle it with issues to be litigated. We ask that the Government transfer all of the Alaska Railroad's property to the State, including the reservations of rights of way over private land, the reasonable rights to access and across Federal lands on proposed corridors—those corridors have already been roughly outlined—and to protect the Railroad and resolve the land issues in this legislation against the claims that are being made against the Railroad or with respect to the claims that are being made against the Railroad properties. We ask that the Congress not simply provide this act and transfer in a way that it results in litigation for years and conflicts between the residents and citizens of the State of Alaska.

With respect to the authority granted to the Department of Transportation, Secretary of Transportation, to make discretionary withdrawals, we ask that that power be deleted or, at least, that that power be exercised before the State has to make its determination. We understand the matter, the Federal Government has not made any reserves or any funding of the contingent and actual liabilities of the federal system to its employees. We believe that such reserves should be made or other funding to cover the employees' rights.

We ask also that the Government, in making this transfer, not inhibit the ultimate transfer to private ownership. The Railroad requires subsidy and, with all of its rights and property intact, has required subsidy for passenger operations for capital improvement and for upgrading. Without this property that we've talked about, and these rights reserved, we believe that the Railroad simply cannot function. It is too expensive for the Federal Government to operate with this property and with these rights. The State or private entrepreneur cannot begin to carry out the objectives of development of resources of the social policies that are involved and of the national defense. Resources Development Council believes that the Railroad—this Railroad benefits the entire Nation and that we need to develop the Railroad and the Alaska resources for defense, for energy, and for export and to offset the balance of payments promptly.

We urge your close consideration of our written suggestions. We hope to work with your staff in developing final language and expect to suggest precise language for changes after hearing the comments today. We thank you for the opportunity to be heard. We are optimistic about the prospects of State ownership and hope that we've been helpful in forseeing some of the possible pitfalls.

Mr. YOUNG. I want to thank you for your testimony. Just for the record, again, you are in support of the transfer to the State with the stipulations which you set forth. I believe there's four or five steps.

Mr. HAUVER. That's correct. We absolutely support the transfer to the State. We at RDC are hopeful that this will be an interim step and that the State will then see fit to transfer the Railroad and bring the Railroad into private ownership. At least, we are hopeful that the Railroad will come into private operation through a management agreement or whatever at a very early time.

Mr. YOUNG. I appreciate that position. I think we ought to sit down on a one-to-one basis a little later on. My understanding is that both legislative packages have been introduced, and contain the unwritten concept of the right-of-ways being guaranteed. There's three different packages. We have the Alaska Native Claims Settlement Act; we have the Lands Act, D-2 Land Act itself which guarantees right-of-way and the Alaskan Railroad Act which guarantees right-of-way across Federal lands. So I think it's in there. If it's not in there specifically enough, maybe we can come up with some better language. I'm very reluctant to establish an "A" and "B" corridor. I think we'd be much better off continuing the provisions under the act of 1917 for extending the Railroad into the north. So, if we write it too tight, we might not have as much as we have now. So we'll work on that.

Mr. HAUVER. We were not actually proposing what we specify corridors. On the other hand, as we rebuild, sir, it appears to us that the enabling act legislation is eradicated, and as a result, those reservations of rights-of-way may be eradicated. It is clear to me, from this bill, that is S. 1500 as drawn—and I'm not familiar with your bill—but S. 1500, that the bill does not expressly contemplate transfer of the power to exercise the rights-of-way to the State with the rest of the Railroad property.

Mr. YOUNG. Well, I can't speak for the Senator, but I believe that's our intent, and if it's not, he'll answer to it.

Senator STEVENS. Well, I think he's talking about the same rights-of-way, the reservation that's in section 2(b)(2), is that right?

Mr. HAUVER. Yes, sir.

Senator STEVENS. I don't understand that now. There's been a series of witnesses here implying that that is a right-of-way across Federal land.

Mr. HAUVER. No, sir.

Senator STEVENS. That's a right-of-way across homesteads and trade manufacturing sites that was reserved by the Federal Government pursuant to the 1914 act. These lands have been in private ownership for many years. Now, it is being suggested that we should transfer this Federal right to take those lands and to use them for the Railroad, or for telephone or telegraph purposes, free of charge, without any limitation as to where they would go. There is not something that says they go along a section line or something like that. I cannot believe that Alaskans would support the concept that those people who homesteaded the State are subject forever to a right-of-way for the Railroad or for telephone or telegraph lines without compensation for their lands. We revoked it previously in the 1947 act that applied to homestead patents, and we should revoke this one. There was no disagreement about that until today. I'm surprised at the organizations that have recommended we preserve and transfer to the State what I consider to be a very, very burdensome privilege that exists now in the Federal Railroad; incidentally, one that has very seldom been exercised, if at all, since 1914.

I cannot believe that your organization sincerely wishes us to give to the State the power to take privately held lands without condemnation. Now, do you really want to do that?

Mr. HAUVER. The cost, Senator, it seems to me, of acquiring the property for expansion—and I believe that RDC takes the position expansion should occur—will be enormous.

Senator STEVENS. That's all perfectly right so long as it's not your land. You know, this is their land. We have, in terms of our highways, repealed it and we're now paying for the lands for rights-of-way for highways. We should pay for the lands for the rights-of-way for railroads and for telephone lines and for telegraph lines. To extend the Federal policy of 1914 into the 1980's as far as the new State ownership of the Railroad, to me, is oppressive. I want everyone to know I'm not going to support that recommendation. That is not going to continue if I have anything to do with it.

Mr. YOUNG. I just would like to say we understand your concern. I think there's some different interpretation. As far as the extension of the Railroad through the Yukon and Canada, it's specifical-

ly clear in the legislation that will take place. The President shall issue that right-of-way under the National Lands Interest Act we passed last year.

But these are the type of comments that we can work on. I think what the Senator's saying is that the interpretation that the Railroad could be held up is not correct. It's the same process of condemnation that I believe the State must follow now but there has to be reimbursement and justifiable compensation given for those lands.

Senator STEVENS. The State also has to show need.

Mr. YOUNG. That's true.

But I think you've made some good points and we'll be communicating further with you and working together as this thing goes along.

Thank you.

Senator STEVENS. Next, we have Bob McMillen with TOTE.

## STATEMENT OF ROBERT McMILLEN, PRESIDENT, TOTEM OCEAN TRAILER EXPRESS

Mr. MCMILLEN. Mr. Chairman, Congressman Young, I would like to present an abbreviated portion of my statement but request that my complete statement be entered for the record.

Senator STEVENS. It will be printed completely, Mr. McMillen.

Mr. MCMILLEN. My name is Robert B. McMillen. I am president of Totem Ocean Trailer Express, known as TOTE. TOTE is a part of Alaska. We have many employees living here in the Anchorage area and we have invested heavily in the future of Alaska.

TOTE operates two new roll on/roll off vessels exclusively in the trade between Puget Sound and Alaska.

Out $130 million of private investment has created over 300 new jobs of which over 60 are seagoing labor and nearly 100 are jobs here in Alaska.

We believe that S. 1500 represents a unique opportunity on the one hand and a serious threat on the other. It is a unique opportunity for Alaskans to develop their State's resources, particularly coal, but it is also a serious threat to countinued private water carrier service to Alaska.

TOTE favors the continued operation of the Alaska Railroad. The Railroad does many things that no private company will or can afford to undertake.

The Railroad also plays an important role in areas where it competes with private enterprise. Indeed, it can be an important alternative mode of transportation and provide important and needed competition. With that principle, we have not dispute as long as the Railroad plays by the same rules that apply to its private competitors once it ventures into competition with them.

TOTE has lost money for several years. During the last year for which data is available, TOTE and Sea-Land together lost about $10 million in the Alaskan trade. That was the same amount that Congress appropriated to the Alaska Railroad for fiscal year 1981. We think there is more than just coincidence in those numbers. We believe that the Alaska Railroad has used its advantages as a Government agency in such a way as to contribute to our iosses. We must consider just how much of a future the Alaskan trade

holds for private, unsubsidized carriers which must compete with a Government agency.

In our discussions with many people, we find almost unanimity on the principle that a Government agency ought not to use its position as an entity of the Government to compete unfairly with private unsubsidized competitors. We also seem to be in agreement that the Alaska Railroad specifically should not be in either the water carrier business or the truck business, that it ought to limit its operations to that of a railroad.

So the solution to the problem which is presented by the continued operation of the Alaska Railroad by a Government agency, be it Federal or State, is fairly simple, and again, stated as a principle, one on which there seems to be a good deal of agreement. That solution is that the Railroad ought not to use its position as a Government agency—in other words, its subsidy either direct or indirect or its governmental immunity from the anti-trust laws—to compete unfairly with private, unsubsidized businesses and that the Railroad ought to operate solely as a railroad and not as a water carrier or as a trucker. Well, how does one achieve that solution?

One suggestion we have heard is that since the Alaska Railroad will be regulated by the ICC, it will be treated like all other railroads and therefore will be no greater threat to its competitors than are the other railroads in the United States regulated by the ICC. We must unequivocally disagree with that suggestion. There are two major differences between the Alaska Railroad and other railroads. First, as we have already mentioned, the Alaska Railroad is heavily subsidized and is part of a Government agency.

There should be no doubt that a public agency which competes with private business enjoys an incredible advantage.

In the case of the Alaska Railroad, for example, being a public agency means virtual immunity from the vicissitudes of the interest rate gyrations that all the rest of us are subject to almost daily.

It means freedom from paying taxes—taxes of any kind.

I means the ability to avoid husbanding resources for major investments or for necessary maintenance. You don't need to plan or hold back your cash for major investments. You can always go to the Government for the necessary funds. Indeed, it is expenditures on major projects that legislatures are most likely to take an interest in and support.

It means no need to maintain a day-to-day working capital fund and avoiding the necessity of ever borrowing short-term money to cover expenses. Yet, that is a problem which almost every private business is facing, particularly today.

It means that management must not concern itself with stockholders who become angry about continued losses.

Most importantly, perhaps, it means that the Alaska Railroad has never been saddled with, and never will be saddled with, long-term debt on its plant and equipment like other railroads. Nor will it be saddled with the necessity of generating the funds to replace that plant and equipment as it wears out or becomes obsolete. Essentially, the Railroad has received and will continue to receive all of its assets for nothing. It must pay no continuing price for the use of the assets.

*Regulation by the ICC has not, is not, and certainly will not* compensate for that kind of direct and indirect subsidy. Necessarily therefore, the costs directly experienced by the Alaska Railroad and upon which its pricing policies are built and upon which the ICC regulation would be based, have not included the subsidy factor. Thus, even under ICC regulation, the Railroad can charge lower prices than those which a private railroad would be forced to charge under the same circumstances. Such a situation, if allowed to continue, can have only disastrous results for the privately owned water and motor carriers who try to compete.

The second major difference between the Alaska Railroad and other railroads is that the Railroad is not subject to antitrust laws. Now, I know that arguments have been advanced that once the Railroad is transferred to the State of Alaska, it will become subject to the antitrust laws. Our lawyers have surveyed the cases upon which these arguments are based and have disagreed. The Railroad will not automatically become subject to the antitrust laws upon transfer to the State.

It is important to keep in mind that S. 1500 gives the ICC complete discretion to exempt the Alaska Railroad totally from regulation, thus eliminating even the meager remedies available to the Railroad's competitors through the ICC. The prior discussions suggest that the solution to the problem of unfair competition by a Government-owned railroad is to eliminate the Alaska Railroad subsidy and restore its liability under the antitrust laws.

On the theory that direct elimination of the subsidy may not be practical, we have advanced an alternative solution which would eliminate the effect of the subsidy on the Railroad's rate structure where it competes with private carriers and obviate the need for an antitrust remedy. Our proposal would only affect the Railroad when it chooses to compete with private carriers. But when the Railroad competes, our proposal requires it to price its competitive services as if it were operated without the benefit of a subsidy.

We know that the solution we have advanced has raised questions as have all the other proposed solutions of which we are aware. We are prepared to work with the committee to develop proposals that will solve the problem and that are fair and workable and in the public interest.

For the fiscal year 1981, the Railroad received $10,647,000 from the taxpayers. Its total expenditures for the year, excluding depreciation, were $30,951,000. By comparison, if TOTE had received from the Federal Government a similar $0.33 contribution for every dollar spent, it would have made about $20 million last year instead of losing $5 million.

We have attached to my written comments a copy of our proposed amendment to S. 1500 for the record along with a short explanation of its provisions.

As I said at the outset, transfer of the Railroad—with its subsidy and antitrust immunity—is both a unique opportunity for Alaskan economic development and a serious threat to the private transportation system on which all Alaskans depend. Our proposal will minimize the threat while preserving the Railroad's ability to act as an arm of the State government to promote economic development in this great State of Alaska.

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Thanks you, Mr. Chairman, for the opportunity to present our views.

Senator STEVENS. Thank you. I'm glad you came because now maybe some of the people who have been critical of S. 1500 realize the perils that this bill will be in as it goes through the committee. I really can't agree with you about that amount that was put in the appropriations bill for the Railroad. You know. I put that money in there. I'm sure you know that, that the Railroad didn't ask for that money. I put that in there to allow the Railroad to replace some equipment and to get some new equipment. It was not for operating subsidy. There has been no operating subsidy provided by the Federal Congress. It was construction money for replacement of equipment that we felt ought to be replaced. It was not a Railroad judgment. It was strictly that of Congress. I really don't think its fair to compare the amount of money we were able to get for the Railroads capital replacement with your situation.

As a matter of fact, it's just the contrary because the deferred maintenance on the Railroad is somewhere around $18 million and we were trying to take some of the burden off the Railroad in the capital area so they might go and do some of the maintenance that they should have done if they had the money. If they had the income that you seem to think they have, they wouldn't have that deferred maintenance. As a matter of fact, they would be a lot better off if they had some of the sources that you had. They can't borrow money. The Railroad is operated without borrowed money, and I don't know of any railroad in the country that hasn't been borrowing money.

The impact of the operation of the Railroad by the Federal or the State government is adverse in other ways as well. It can't write off the assets against income from other sources which many corporations do when they have a profitable area and a nonprofitable area.

With due respect, I think one of the worst things that could happen to TOTE and Sea-Land would be to have the Railroad not operate. I think you're as dependent upon the vital transportation link into the interior as anyone else, and I would hope that you would see it that way

Mr. MCMILLEN. Mr. Chairman, we certainly want the Alaska Railroad to operate. There's no question about that. We feel the State needs the Railroad, and I certainly have no problem with the fact that a portion of the subsidies go into maintenance and equipment, we recognize that those are necessary. We just do not want to get into a situation where a subsidized railroad, be it Federal or State, is competing ratewise with the private owned water carriers and truckers.

Senator STEVENS. Well, it depends on what the competition is for, doesn't it? If it's a subsidy for passenger service that you don't provide, and that no one can provide without a subsidy, then why would your company oppose the subsidy?

Mr. MCMILLEN. I have no problem as long as it's clearly specified that it's in the passenger area.

Senator STEVENS. That's the only operating subsidy we've provided in the past and the only one we envision now. I think it will

have to be subsidized for a substantial period of time before passenger service could pay for itself.

I cannot agree with amendment to the bill that would mean the State would not take it. I think the State legislators would tell you that. If the amendments you suggest were added to the bill, the State would say they didn't want the Railroad. Now, if that's your goal, well then, I guess you'll have to pursue it. I can only tell you that we will have to continue to oppose any amendment to this bill that would put the State in a position that the Federal Government has not been in when it operated the Railroad.

As you point out under existing law, the State will have an exposure to the antitrust laws that the Federal Government itself did not have. There's nothing I can do to legislate that away. I think, from the point of view of the Constitution, it would survive as I understand it and I think your lawyers have told you the same thing. Other than that, I do not see that we should put the State in any position that the Federal Government is not in if it agrees to continue to operate the Railroad and maintain it not just for the State, but for national defense purposes. I don't know if Frank has any comment on it, but I've really got to be very frank with you about it.

STATEMENT OF DAN O'NEAL

Mr. O'NEAL. Dan O'Neal. I'd like to comment on that for the record.

TOTE has no problem whatsoever, obviously, with money that is used for purposes other than affecting the rates that are charged on traffic that is competitive with what TOTE and Sea-Land move. The difficulty is that if you have a railroad that has—we point out in the statement, it has no requirement to meet capital expenditures, to borrow money of that kind, that automatically reduces their costs all throughout the system and it gives them greater freedom to reduce their rates where you have competitive traffic.

We are also not happy with the present situation with the Federal Government. I can assure you of that. We'd like to see that changed. We think there's a better chance of that changing, quite frankly if the Railroad stayed with the Federal Government. We recognize that a transfer to the State is likely. We don't oppose it. We would just like to make sure that we don't have to compete against a subsidy and we think that the condition we're proposing should not be opposed by the State because, indeed, it will provide the State with more revenue than it would get otherwise if it maintained current pricing policies.

Senator STEVENS. Part of the subsidy that's involved here is intended to encourage expansion to the interior, that is, to encourage transportation to areas where we do want rate differentials. For that reason, when you deal with traffic like the Whittier traffic, it's subsidized traffic so that we can get freight rates through to Fairbanks where rates have not been totally compensatory because of the circumstances existing in Fairbanks. The Federal Government has been able to do this, and I can't understand why we should agree to amendments which would put the State in a worse position of trying to operate this Railroad. It's going to be a burdern to the taxpayers of our State or at least effect the income

of our State. By definition, it's going to cost something, that is, we're going to subsidize it to a certain extent. There is at least a 33-percent national interest from a defense standpoint in this Railroad. The State's going to take over and agree to operate it without any further assistance from the Federal Government. Your amendments would say that in doing so, it would have to have charge rates that were different from those the Federal Government's had in the past. Those will decrease revenues. You don't get more freight automatically by increasing rates, unless there's something there that I don't understand.

Mr. O'NEAL. You don't get more freight necessarily, but there is a point at which you can increase rates and still make more revenue, and we think that point has not yet been reached.

Senator MURKOWSKI. Mr. Chairman, I'd like to address this point a little bit. Since the implication is that we've got a competitive situation here that's less than equitable for reasons that you have suggested. In looking over the distribution of freight traffic by commodity groups, it's kind of interesting. Coal is about 33 percent; 22 percent is sand and gravel; petroleum is 14 percent; forest products are 6 percent; and manufacturing and miscellaneous, which I assume is the area where you have competition, is only 16 percent. So, it would seem that the traffic on which the Railroad and water carriers are competing is a relatively small part of the total percent of revenue tons carried by commodity groups. When you break it down that way, I'm wondering just how much of a competitive factor this represents in relationship to the total volume of freight moved by the Railroad. What you're telling me is that 16 percent of the Railroad's traffic is competitive between yourself and Sea-Land and other carriers.

Mr. O'NEAL. That's the situation today. We are talking about a relatively small amount of the traffic that moves by the Railroad and I guess we could use that argument and say that therefore, the substitution for the marketplace, which is really what our proposal is trying to do, will affect very little or a small amount of the traffic on this Railroad and shouldn't have a large impact on the Railroad.

Senator MURKOWSKI. Well, it appears to be very little from a competitive standpoint too. Turn it around the other way.

Mr. MCMILLEN. I think, Senator, what we're attempting to do here is look to the future and just protect our interests in the future.

Senator MURKOWSKI. I can understand that, gentlemen, very much. I would like to have one other area explained. In your testimony, you quote that the Railroad ought to operate solely as a Railroad and not as a water carrier or trucker. Could you, for the record, elaborate on why you feel the Railroad acts as a water carrier, unlike any other railroad that may have a through route and joint rate arrangement.

Mr. O'NEAL. We're not contending that it now operates as a water carrier and we're not addressing any current truck operations they might have. All we're saying is that we're concerned, frankly, that the State's going to be sitting here with $3 million of spendable money and that bureaucracies, being what they are, and people wanting to build empires, there will be the potential that

somebody will say, "Well, we're not happy with the kind of water service we're getting. We can do a lot better job by drawing down these moneys, so why don't we get into this business ourselves."

Senator MURKOWSKI. Well, the State is in the ferry business and yet, the barges still operate because of the limited capability of the ferries. I assume you view the State as subsidizing the ferries.

Mr. O'NEAL. That's exactly what bothers us, Senator.

Senator MURKOWSKI. Yes, but the point I'm making is that still a majority of the freight in Southeastern moves by means other than ferries. It's high-revenue rail and whatever limited space they can get. I just can't envision the State becoming a very major water carrier.

Senator STEVENS. Well, Frank, lets look at it this way. Did TOTE bid at the Crowley got the contract with the Railroad?

Mr. MCMILLEN. Did we bid?

Seantor MURKOWSKI. Didn't TOTE try and get that business with the Railroad?

Mr. MCMILLEN. No.

Senator STEVENS. Crowley has the contract and, in effect, your amendments would eliminate a competitor, wouldn't they? I mean, Crowley already has a contract with the Railroad and its come in and testified in support of the bill as it stands now. Your amendment, as I understand it, would eliminate some of the arrangements that exist between the Railroad and Crowley today. Is that not right?

Mr. O'NEAL. It should not have any effect on the arrangements themselves. It would have an effect on the rates or could have an effect.

Senator STEVENS. Those rates were part of the bid, and I don't think that we should be in the position of legislating where there is a competitive interest. When the State takes over it, I assume they're going to put out to bid to see who provides the water connection for the freight that's coming through to connect with the Railroad. As such, it is a competitive situation. We want to preserve that competitive situation for the future. Your amendments would deny us that competitive situation in the future. I can understand your position; you don't like it right now, but you might well get to bid when the State gets it and then, where would you be if your amendments were on the bill?

Mr. O'NEAL. Well, let me go back here a minute. TOTE and Sea-Land did not provide a barge service. TOTE only ships trailers that can be hauled either on a flatcar or can be hauled by truck. TOTE and Sea-Land have never bid for the same kind of business that—and shipping commodities in the same form as the Railroad.

Senator STEVENS. I'm corrected then. I thought it was a transportation mechanism, but you have sought the business of connecting with the Railroad, have you not?

Mr. O'NEAL. We do connect with the Railroad. We connect with the Railroad here in Anchorage and send a lot of business via railroad. We think the Railroad is important. We use it and we'd like to see it continue in existence.

Senator STEVENS. Well, we've got here, and I think we ought to put it in the record, the Railroad's operation summary. It shows that it's got about a $5.8 million loss in 1981 as against revenues of

$28 million. In 1971 it had revenues of 15.7 million and a loss of $3.3 million. That was prior to the arrangement you're talking about. The ratio in terms of the loss is declining as we go into this period of time that they've had this arrangement. They're still losing money this year. How are you doing this year?

Mr. MCMILLEN. We expect to be in a profitable position this year, Senator.

Senator STEVENS. I heard, as a matter of fact, that there's so much freight down there at the dock, there's not enough equipment to carry it up here.

Mr. MCMILLEN. This is our busy time of the year, that's quite true.

Senator STEVENS. If that's the case, do we need these amendments? Isn't there enough business for everybody?

Mr. MCMILLEN. Well, I'm not so sure that the situation we're presently in today will remain in the long-term future.

Senator STEVENS. Well, let's pray that it will be. I hope it will be.

We'll be in touch with you again. I know that you've got some very able people that represent you. They come in to see us all the time. We'll try and see if there's any way we can find a middle ground here. However, I really can't see it right now.

[Discussion off the record.]

Senator STEVENS. I'm going to ask Senator Murkowksi to finish the hearings today. I am sorry for my jumping in and out, but with Secretary Watt here, I've been involved in other matters all day. I'm grateful to Congressman Young and now, to Senator Murkowski for finishing the hearing. I do thank you very much.

Senator MURKOWSKI. Next witness will be Port of Anchorage, Chris Gates. I'll be standing in for Senator Stevens and I would invite you to go ahead with your testimony.

## STATEMENT OF CHRISTOPHER GATES, MANAGER, MARKETING AND DEVELOPMENT, PORT OF ANCHORAGE

Mr. GATES. Thank you, Senator. My name is Christopher Gates. I hold the position of manager of marketing and development for the Port of Anchorage.

I thank you for this opportunity to speak to you regarding S. 1500, a bill providing for the transfer of the Alaska Railroad to the State of Alaska, and I'm speaking today on behalf of Mayor Sullivan.

First I would like to present a municipal resolution supporting the transfer of the Alaska Railroad to the State of Alaska approved by the Anchorage Assembly on April 21, 1981. That resolution is attached to our testimony. The resolution is included in the material presented and I will not reiterate it here now. However, the purpose of the resolution is clear and supports the concept of no cost transfer of the Alaska Railroad to the State of Alaska.

As this committee is interested in testimony regarding S.1500, I will limit comments to the bill and then close with some issues that the municipality feels are important to any transfer process. Briefly, our basic concerns with the legislation are as follows:

(*a*) The bill does not allow the State to know what real or personal properties are to be transferred with the Alaska Railroad until 6 months after enactment. Without knowing what assets are

to be transferred, the State and its citizens could not say whether this is a good bill or a bad one. If the Secretary decides to hold all the buildings in the Federal inventory, for example, or if the properties to be transferred are unacceptable to the State in any way—we all would have gone through considerable time and expense in this process and many hours of work for nothing. This potential for waste could be simply avoided by providing an inventory of the assets and real properties to be transferred prior to Federal enactment of this bill.

(*b*) The bill does not allow the State to understand the liabilities and obligations that the citizens would be responsible to pay prior to enactment. Unlike section 4 of the bill, wherein a 6-month period is set aside to define the actual properties transferred, this bill does not set a specific period of time for the Secretary to quantify the costs, type, or duration of the various obligations that the State will be expected to accept and honor. Under this legislation, the State could be forced into a position wherby we accept the transfer without knowing the true costs or face liquidation and sale of the Railroad assets. This situation is likely given the limited amount of time which the bill provides to effect the transfer and could be unfair to the citizens of the State of Alaska.

The requirement to know exactly what we're getting into in terms of long-term agreements and costs to the State is, we believe, of paramount importance. We consider the silence of this bill on providing true liabilities and obligations of the Alaska Railroad to the State to be a serious flaw.

(*c*) The original intent of the 1914 statute which created the Alaska Railroad was to provide for a line or lines of railroad in the territory of Alaska not to exceed in the aggregate 1,000 miles so as best to aid in the development of the agricultural, mineral, and other resources in Alaska.

As of this date, approximately 500 miles of the 1,000 has been built. Also, more recent Federal legislation has been written into law that limits the fulfillment of the 1,000-mile railroad concept by restrictively classifying areas that would be traversed by the Railroad to affect the development. The municipality is vitally concerned with and supportive of resource and economic development in the interior, and suggests that Federal legislation concerned with the transfer of the Alaska Railroad also include or formally recognize a commitment on the part of the Secretary to assist the State in expanding the present Alaska Railroad into other areas of Alaska. We feel that the Secretary should commit to assist the State through access corridor acquisition and expedite permitting for expansion of the Railroad to strategically important mineral resource areas to the north and west of the Fairbanks area.

Section 7 of S. 1500 states that the reversion of the Alaska Railroad back to the Federal Government can take place if within 10 years after the date of transfer to the State, the Secretary finds that all or part of the property transferred to the State is converted to a use that would adversely affect Railroad operations. We suggest that this clause is entirely too vague for the prudent and flexible management of the Alaska Railroad. Such discretion seems to present too great a risk for the State to invest substantially in what may or may not adversely affect Railroad operations in the

opinion of the Secretary of Transportation. Further, if the State decides that private ownership is in the best interests of the citizens, we would have considerable difficulty in enticing private investment with such a clause intact due to the cloud on the title to lands and property that such language produces. We feel that no mortgager would lend money to a private concern of such risks and suggest that this limitation be removed from S. 1500 prior to the enactment.

The above points represents our basic concerns of S. 1500 as written. With regard to the transfer in general as it relates to the municipality, we have some further thoughts that we would like to present today. Many of these may be issues which we later will take up with the State if appropriate.

The first is a request by the municipality to the State entity that analyzes the takeover to evaluate a classification of land relating to community purposes that might be overlooked in typical Railroad property classifications. The municipality of Anchorage has grown up around the Alaska Railroad Terminal Reserve to the point where the highest and best use of certain small tracks of Alaska Railroad land might be for community development and recreational needs. Such is the use of some lands presently, and as such, should be so recognized in inventorying lands prior to transfer.

Another concern is that in the past, the Alaska Railroad has leased land located on the Anchorage waterfront to nonmarine-related enterprises. We feel that the land on the waterfront is very scarce and valuable and should be developed as urban waterfront with water dependent uses having a priority over other uses. The ability to exit the State's natural resources by low cost deep-draft shipping should be maintained and enhanced. By keeping Alaska Railroad waterfront land for marine-dependent uses, the State's option for economic development of its resources would be improved.

Another concern that the municipality holds with the transfer in general relates to our desire for equal competition for general commodity carriers into Southcentral Alaska between the Alaska Railroad and Southcentral Alaska's largest general commodity carriers, Sea-Land and Totem Ocean Trailer Express.

We hope that the new Railroad entity will compete on an equal footing with private industry by pricing its transportation services on fully allocated costs, a fair rate of return on investment—not just a cost of capital—and provisions for taxes. Allowing Railroad to exclude any of the above would be unfair to private industry carriers who compete with the Railroad and who must pay taxes and show a profit to stay in business. Alaska needs the competition between general cargo carriers and the municipality is interested in supporting equal competition.

In furtherance of this theme, we feel also that the Alaska Railroad should be operated to the highest degree possible as a business with any social and/or economic subsidies clearly separated and reported away from the business of running the Railroad. This is the only method by which objective performance evaluation of the Alaska Railroad management team can take place and given an

accurate basis for investment by third parties or the public, if private investment is warranted.

The Bivens/Iser Assessment of Railroad Ownership and Operational Alternatives was clear in its statement that confusion occurred in the past as a result of the Railroad being used for social development while being evaluated as a business. Clear objectives emphasizing that the Railroad is to be run as a business as opposed to a social development tool should be a stated requirement for management under any entity following its transfer.

Again, the municipality supports the transfer of the Alaska Railroad from the Federal Government to the State and appreciates your efforts toward that end. We have listed our concerns regarding the proposed legislation and other concerns the municipality has regarding any transfer proposed. We hope we have positively contributed to the process of transfer and stand ready to assist in whatever manner you deem desirable. We are prepared to answer questions at your convenience.

Thank you again for the opportunity to be heard and holding these hearings in the municipality of Anchorage.

Senator MURKOWSKI. Thank you, Mr. Gates. On behalf of the chairman of the hearings, Senator Stevens, please indicate to Mayor Sullivan how appreciative we are.

I might make on observation. You indicated that you feel that the Secretary should commit the Federal Government to assisting the State through access to corridors to permit expansion of the Railroad to the strategically important mineral resource areas of the north. But then on page 6 you indicate that a clear objective should be to operate the Railroad as a business as opposed to a social development tool. Is there not a bit of conflict in the two statements? I point this out because it seems to run as a general theme here. If we've got a railroad that's going to be used as a development tool and entitled to 1,000 miles of trackage, then it's not going to return a sufficient revenue to amortize the investment.

Mr. GATES. Senator, my top sentence here is that in furtherance of our whole testimony, we feel that the Alaska Railroad should be operated to the highest degree possible as a business with any social and/or economic subsidies clearly separated and reported away from the business of running a railroad. We admit that the Railroad must have some subsidies to develop in the resource-producing areas, but yet there's no way to evaluate the management of Alaska Railroad or the effectiveness of meeting its goals without running it as a business.

By the way, I might point out that we have greatly appreciated the current Alaska Railroad management team and their cooperation with the municipality of Anchorage. I would like to publicly thank Frank Jones for his assistance in a recent coal project that we were working on.

Senator MURKOWSKI. Thank you, Mr. Gates.

Mr. GATES. Thank you.

Senator MURKOWSKI. Mr. Sheffield, it's a pleasure to welcome you to the Committee.

## STATEMENT OF BILL SHEFFIELD

Mr. SHEFFIELD. Thank your very much, Senator. Thank you for this opportunity to share some thoughts and concerns about the future of the Alaska Railroad.

The Railroad has, of course, played an important part in Alaska's growth and development to date. The Alaska Railroad was responsible for the settlement of Anchorage, the transportation and commercial center where we are meeting today.

In establishing, owning and operating the Alaska Railroad, the Federal Government has provided an essential ingredient in the social and economic lives of Alaskans, while at the same time meeting critical security and defense needs on our national perimeter, for all Americans. You and others involved in this continued effort are to be commended.

Over the years, military rail transportation needs, while still significant, have diminished, while civilian, social and commercial demands on the Railroad have multiplied. It is understandable that the Federal Government lacks the continued motivation and resources to meets these increasing Alaskan domestic needs. As a result, the Railroad appears to receive progressively less attention and support from the FRA and DOT.

Therefore, it is time for ownership and operation of the Alaska Railroad to pass from the Federal Government to those whose primary business is to serve Alaskans. Though it might be preferable to see the Railroad under private ownership and operation, that does not appear feasible, at least at this time, and, according to Federal administration officials, time is of the essence. The best current solution appears to be the transfer of ownership to the State of Alaska, including land, buildings, leases, equipment and rolling stock, capital and operating reserves.

S. 1500, introduced by you gentlemen, would provide for such a transfer, and your initiative, of course, is appreciated. I hope you will agree that the State should undertake such endeavor only under conditions that will permit efficient operation of the Railroad and such improvements and expansion as may be necessary to best meet the needs of Alaskans. That being the case, S. 1500 should be viewed as a focal point to begin discussions; an important initial document, but one which probably requires modification and adjustment before State ownership should occur.

Some of the most serious concerns about the potential transfer have to do with the Railroad's most important current resource, its skilled and professional staff and and work force, together with the vital issues of land holdings and rights of way.

The Railroad's progress and stability can be attributed, in large measure, to the quality of its employees: A highly dedicated and talented group of more than 600 full and part-time employees, some with more than 15 years of loyal service. These employees deserve and enjoy a variety of customary Federal employment benefits, plus some special Federal Government obligations, such as relocation and turn-around trip guarantees. While section 3(a)(3) of S. 1500 addresses some of these concerns, many benefits, including retirement and disability, are not specifically mentioned. I suggest that employee representatives be invited to take part in any fur-

ther discussions which might pertain to their rights and benefits, and that S. 1500 might be amended as it goes down the road.

The State should not be required to assume Federal Government employee obligations that would not have been incurred under State ownership, especially when assumption of those obligations could jeopardize self-sufficient State railroad operation. Accordingly, I suggest that the Federal Government continue to satisfy these obligations to employees to the extent they exceed the cost of comparable, applicable Alaska State benefits.

This is perhaps the most complex and difficult remaining problem. The Alaska Railroad land acquisition and ownership provisions established under Public Law 69-63 in 1914 and Executive Order No. 1 in 1915 should not be dismissed without careful consideration and review of the present and future needs of the Railroad, if it is to truly serve our people.

To the extent possible, essential Railroad land and right of way should be conveyed with title free and clear of all adverse claims, or a satisfactory consideration for unresolved claims should be provided.

However, to ignore potential claimants, especially native groups, in the process, is to invite litigation and delay in the transfer. The exclusion from the Alaska Native Claims Settlement Act now found at section 5(b)(1) of S. 1500 would certainly be controversial. As I understand it, the House Interior Committee has ANCSA, Alaska Native Claims Settlement Act, oversight responsibility, and Chairman Udall could seize this opportunity to thwart or delay the legislation.

Perhaps a better course of action would be to make the transfer of real property subject to valid existing rights. This could help avoid buying immediate trouble and lengthy litigation. The transfer could occur in a timely manner, with subsequent determination of disputed claims through processes already in place.

There are other factors that I won't try to detail here, but will likely have been addressed by others during your deliberations this morning.

These pertain to the continued commercial viability of the Railroad under State control, the transfer provisions necessary to preserve this viability and the need for a clean and clear break from continued Federal oversight and control.

I am sure you share my desire, and that of most Alaskans, to accomplish this transfer in the most equitable and expeditious manner possible. I stand ready to assist you in any way possible in reaching a positive conclusion.

Thank you, Senator.

Senator MURKOWSKI. Thank you, Mr. Sheffield. We very much appreciate your testimony and the concise manner in which it was presented and your suggestions will certainly be heeded as we review the pending legislation.

Mr. SHEFFIELD. Thank you very much.

Senator MURKOWSKI. Next, we have Jim Campbell of Spenard Builders.

Mr. Campbell, we welcome you to the witness stand and look forward to your testimony. Please proceed.

## STATEMENT OF JIM CAMPBELL

Mr. CAMPBELL. Thank you, Senator. I shall be quite short.

Gentlemen, our company operates 10 retail building stores and a distribution center within the State. Our relationship with the Alaska Railroad dates back 29 years. Four of our stores are located on Railroad sidings and our three stores on the Kenai Peninsula utilize the Alaska Railroad facility at Moose Pass for rail shipments into their trading area. Building materials are very compatible with a rail carrier and the Alaska Railroad has provided this firm a consistent, timely, and competitive transportation vehicle for the movement of volume shipments into the Alaska markets.

The Alaska Railroad, in conjunction with Alaska Hydro-Train, has historically been instrumental in acting as a stabilizing influence on rate structures in the Railbelt area. The introduction of rail/barge service by these carriers into Alaska, enabled us, for the first time, to load railcars at the mill or manufacture for through shipment to locations within the State. The resulting freight savings substantially reduced the cost to our customers on bulk commodities used in the construction trades.

I tried to find an article that a customer of mine sent me some years ago on plasterboard, for example, that one time in Alaska we were selling it for, perhaps, maybe $8, $7 a sheet. It's now down to $4. Those are not the right prices but heavy commodities like that have come down in price because of freight, not only with the Alaska Railroad, but other carriers into Alaska.

The Alaska Railroad is a relatively no frill carrier and must be allowed to function much as a private enterprise without political influence and restraints. They must be able to:

No. 1, structure their rates based on the services they provide when taken into consideration the service of that of their competitors.

Retain certain information that, by its nature, is competitive or divulges various aspects of a confidential relationship with their customer.

They must retain the ownership of land for the accommodation of its customers, but more important, in the development and encouragement of industrial users adjacent to their facilities.

My concern is that the Federal legislation to transfer the Alaska Railroad to the State of Alaska may result in undue restrictions that would severely limit the ability of the Alaska Railroad to be a competitive factor in the marketplace.

Quite simply, if the Federal Government does elect to transfer ownership of the Alaska Railroad to the State of Alaska, I would hope that the legislation only addresses the issue of transfer, with no restrictions upon the State of Alaska as to its constitution of the Railroad.

The Alaska Railroad allowed to function much as private enterprise with a positive approach toward deregulation rather than overregulation, can and will provide a vital contribution to the development of this State.

I guess, quite simply, what I'm saying, is that its a twofold thing. First, the legislation in Washington and then what we do with it when it gets back to the State. I feel very comfortable with the proposed legislation. Keep it clean and then let the State, who

should have the responsibility, decide what they're going to do with it. Don't legislate what the State should do with it.

Senator MURKOWSKI. Thank you, Mr. Campbell. We appreciate your views. You're aware that there are some who have suggested that the State not involve itself, as you have suggested. I think that when the staffs begin to review the testimony, they will take your remarks in good stead. Thank you.

Mr. CAMPBELL. Thank you, Senator.

Senator MURKOWSKI. In view of the fact that we're running behind time, I want to say that if any of you would care to submit your statements for the record and give us a synopsis, that would be appreciated by the Chair.

Mr. Herb Lang from Anchorage Sand & Gravel, is the next witness to testify.

We welcome your testimony.

## STATEMENT OF HERBERT C. LANG, PRESIDENT OF ANCHORAGE SAND & GRAVEL CO., INC.

Mr. LANG. Senator, members of the committee, my name is Herbert C. Lang, and I am president of Anchorage Sand & Gravel Co., Inc., and Alaska Basic Industries.

Our company is in the ready-mix concrete, concrete block, asphalt, sand and gravel, and building materials supply business. We have facilities in Valdez, Palmer, and Anchorage. Our relationship with the Alaska Railroad goes back to 1938 when our company was started by its founder, Art Waldron.

In past years, various stateside freight was supplied by Alaska Steamship Co., and the Alaska Railroad, and more recently by Hydro-Train and the Alaska Railroad.

Some 7 or 8 years ago, it became apparent to us that the Anchorage area no longer could supply the sand and gravel requirements from local pits and it would be necessary to import material. Our company made a thorough investigation of the situation and after numerous meetings with the management people of the Railroad, we built our gravel loading facilities in Palmer, and our gravel unloading facilities in the south part of Anchorage.

We have contracted with the Alaska Railroad each year for a train, generally with 80 cars, with an average frequency of once a day. The train is generally utilized through the months of May to September, a period which allowed the material to be transported without freezing in the cars. For the last several years our company was the largest tonnage shipper on the Railroad and we may still be so.

The main point of my remarks is to show that our company has invested several millions of dollars in dry bulk handling facilities designed to work with the Alaska Railroad. Thus, their good economic health and future is of great interest to us.

I understand that the U.S. Congress is considering legislation to turn the Alaska Railroad over to the State of Alaska. For many of the same reasons that I supported statehood, I would support this transfer from the Federal Government. However, in order to give the Railroad every opportunity for economic success, I urge that the Railroad be turned over to the State with the minimum number of restrictions and limitations. I believe the transfer should

include all of the Railroad lands that are presently held, reserved, or owned by the Railroad. It is absolutely essential that the new Railroad have adjacent lands for expansion, for material sources, for their own use and for accommodating their shippers. I have heard and read of the objections being voiced by one or more of the native corporations concerning the Alaska Railroad's lands. Their wish seems to be that the Railroad be limited to a narrow right-of-way and all other lands be turned over to them.

I believe that Congress and the State of Alaska have dealt most generously with regional and village corporations and that the lands used, held, reserved, or withdrawn for the Railroad should be passed along with the other assets and liabilities of the Railroad.

The important thing to keep in mind is not who gets what piece of land, but that the Railroad, the new Railroad, if you will, be given every chance of success and that success will be beneficial for Alaska and all of its citizens.

Further, I would hope the transfer would be in such form that the new Railroad would have an opportunity to take a more enlightened and modern approach to its labor contracts and to the work rules associated therewith. There are a number of archaic provisions that the present Railroad and its employees are obliged to live with. Many of these provisions do not serve management or labor very well and merely cause the Railroad to be less competitive.

Even though we have but one Railroad in Alaska, make no mistake it must be able to compete with the trucking and airline industries. Though our company basically is not a trucking company we do employ, at times, up to 50 vehicles and are very much aware that the economic line between the use of rail and the use of truck is very, very close and small changes on either side could divert large tonnages from one transport form to another.

I think it is a well-known fact that the Alaska Railroad has never been a great moneymaker and now the Federal Government has a mind to give this nonearning asset to the State. I would suggest that a golden handshake be appropriate, that is, a one-time appropriation to fund some new much needed equipment for the Railroad.

I would like to touch on one last point which may or may not be directly germaine to the legislation being considered now, but I believe that the operational form of the "New Railroad" is of great importance. I would strongly urge that the "New Railroad" not be placed under one of the existing State departments, but rather be operated as a separate, quasi-independent authority. This authority would have, perhaps, the status of a public corporation and be run by a business-minded board of directors. I believe it would be best served if we did not fall under all of the normal rules and regulations of the State, but be allowed to operate its own lands, make its own purchases, negotiate its own labor contracts, hire and discharge its own employees in a manner similar to private enterprise.

Let me say in closing that I have enjoyed working with the Railroad and its employees of the Alaska Railroad, and I really believe that the business affairs of the Alaska Railroad could flour-

ish if management was given the business form flexibility, the same or similar to my recommendation.

Thank you very much for this opportunity to make these comments and thank you for coming to Anchorage for the hearing.

Senator MURKOWSKI. Thank you, Mr. Lang. We appreciate your testimony. I'd just like to mention that the golden handshake is kind of hard to find around that environment today, but I think in testimony earlier, Senator Stevens indicated, as you know, there were funds appropriated and unfortunately, they weren't enough.

Mr. LANG. Senator, if we didn't ask, we wouldn't be turned down.

Senator MURKOWSKI. Thank you, Mr. Lang. For all of your information, the record for this hearing will be open 30 days. The FRA will be responding to questions raised here in Anchorage up in Fairbanks at 9 o'clock tomorrow. I guess that's the way information flows, it flows north. However, those replys will be made a part of the record.

Again, I would urge any of you who wish to submit statements for the record, to do so in the next 30 days. We thank you for your testimony. It has been most worthwhile. On behalf of Senator Stevens, I think I can say that he's appreciative of the input that has been made here today. We are committed, obviously, to the development of a bill which is in the best interests of the State of Alaska. With that, I would adjourn this committee hearing. The next hearing will be in Fairbanks tomorrow morning at 9 o'clock.

[Whereupon at 4:10 p.m. the hearing was adjourned.]

# TRANSFER OF THE ALASKA RAILROAD

TUESDAY, AUGUST 11, 1981

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
*Fairbanks, Alaska.*

The committee met at 9:30 a.m., in the Federal Building; Hon. Frank Murkowski presiding.

## OPENING STATEMENT BY SENATOR MUKOWSKI

Senator MURKOWSKI. Good morning. I'd like to welcome you to the continuation of field hearings on S. 1500, a bill which Senator Stevens and I introduced to authorize the transfer of the Alaska Railroad to the State of Alaska. I'm very sorry to report that Senator Stevens is not going to be able to be with us morning. He sends his regrets, and hopefully, if he feels better this afternoon, he may yet be with us. Bill Phillips is representing him here this morning. I have on my right Jon DeVore, who is my staff person handling among other things, the Alaska Railroad; Dave Markey on my far right, my administrative assistant; and Marsha Cose from my Fairbanks office. We also have Marylou Stealy and Mazine Stanley from Senator Stevens' and Congressman Youngs' offices respectively. Here from the Senate Committee on Commerce, Science, and Transportation are Pamela Garvie and Linda Morgan.

It's certainly a pleasure to be here in Fairbanks, and again, I'm regretful that Senator Stevens is unable to be here. I feel it's an excellent opportunity for Alaskans who are directly impacted by the Alaska Railroad to address this proposal. We've reached a critical point in the operation and the life of the Alaska Railroad. The Reagan administration, of course, has placed its highest priorities on balancing the Federal budget, reducing Government programs and removing the burden of high taxes on individual citizens. Many Federal programs, both large and small, have been targeted for reduction or elimination as part of this effort. Congress is supporting the President. After fiscal 1982, Federal funding for the Alaska Railroad is expected to be zeroed out. Recognizing this situation, S. 1500 has been introduced. The bill is intended to provide the mechamism for transferring the railroad to the State of Alaska. Alaska, if it accepts the offer, would receive all the railroad's assets and its obligations. The bill provides a means to insure that the railroad would provide both freight and passenger service to the entire railbelt region. Of course, Fairbanks would benefit greatly from the continued operation of this Railroad. Fairbanks is likely to be the hub of the expansion of the Railroad. The export of coal and the construction of a natural gas pipeline will



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require expansion of the existing railroad. I have a number of concerns about the transfer of the Railroad, however, and after the hearings yesterday in Anchorage, I know that many of these concerns are shared by other Alaskans. We need to know exactly what the railroad assets and liabilities are. In addition, the management plan by which the railroad will be operated must be considered by Alaskans. The legislation that enables the transfer of the Railroad should not hamstring the efforts of the State or its management designate to operate the Railroad effectively. The Railroad should remain subject to the same ICC requirements as any other railroad operated in this country. It should not compete unfairly against alternative methods of transportation providing the same services. Finally, we need to know what employee rights and contractual obligations will be transferred with the Railroad. During the hearing process and congressional consideration of this legislation, I am confident that these questions will be addressed. I look forward to hearing from the witnesses we have today on these matters. The first witness is Commissioner Bob Ward of the State of Alaska. Commissioner Ward, would you please take the witness stand? I am pleased to welcome you to the hearing.

## STATEMENT OF BOB WARD

Mr. WARD. On behalf of Governor Hammond and the State of Alaska, it's my pleasure to thank you Senator Stevens, and the committee for the hearings in Fairbanks and Anchorage. It's a very nice gesture and an important one, so that more Alaskans can get some comments into the record. I think a fair characterization of Governor Hammond's position on the Railroad is that he would much prefer that the Railroad be owned, operated, and managed by private industry. His position also is that it be operated in a manner that is efficient and consistent with the use and needs of Alaska. For a variety of reasons that are generally known to most of us, I think that that opportunity at this time is probably not a very reasonable one. In that context, the Governor still has great concerns about State operations that require the use of public funds to support the operation of this type of an endeavor. Toward that end, Governor Hammond asked my department very nearly a year ago, recognizing that the Federal Government was reaching the point of wanting to not be involved in the operation of the Alaska Railroad anymore, to develop the best set of scenarios that we could and information that we could relating to the railroad, its operation, its opportunities and its problems and have them available when the issue matured to the point that it is today. In that context, submitted to your committee for the record is a report of the efforts of John Gray, the Institute of Social and Economic Research for the University of Alaska, and John Bivins of Bivins & Associates. It addresses some of the very key issues pertaining to Railroad operation and to the transfer of the Railroad. In addition to that, the department of law has contracted for the services of the Wickwire law firm to assist in developing operation scenarios and legislation that would be required to implement on the State level the acquisition of the Railroad. As far as S. 1500, the general concern of the Governor and the State executive branch relates to the fact that the transfer should accommodate the State's need for

maximum flexibility in establishing operational structures and organizational structures that would eventually lead to private operation and ownership of the Railroad. They also are concerned the legislation allow maximum flexibility in terms of operational opportunities.

Again, if I may use the term, to allow the State and whatever organization subsequently emerges to have the opportunity to operate the Railroad in the most efficient and viable manner possible. The Railroad has been somewhat marginal in the past, and I know there have been peaks and valleys, similar to many of the other things that occur in Alaska, but if it has been a somewhat marginal operation in the past, the transfer legislation on the Federal side should not contain any provisos or constraints that would give the State less opportunity to manage it than the Federal Government had before. In that context, I'd like to talk about four different items that we have some concerns with the legislation. The first one relates to the employees themselves and the liabilities that might come with the employees. In order to couch that concern in its proper context, the State recognizes, as I'm sure most Alaskans do, the importance to the railroad of its employees and the resource that does exist in the railroad is in the nature of the Alaskans who work for it. Recognizing that any successor organization to the operation of the Railroad will require competent and trained employees to operate the Railroad, the future of those employees who operate it now, in the competent fashion that they do, is virtually assured in subsequent operations. The concerns that we have relate to the liabilities that exist, liabilities relating to pensions that have accumulated as a result of long-term tenure with the railroad by employees, as well as annual leave and sick leave benefits, and other benefits that they have appropriately accrued because of long-term employment with the railroad. We believe those rights should be protected, but there should be a cutoff point where Federal liability continues and State liability would begin. It's also important that we know the parameters and the guidelines of those cutoffs, and that the State at least have the opportunity, after a reasonable transition period, to negotiate with those employees like we do with all of our State employees, and that we not be tied to open-ended agreements and contracts that could prevent our operation successfully in the future.

Another issue of concern to us is the status of the land in the railroad right-of-way. We would like very much to see that the legislation clear title on the land that the Railroad presently uses. If that cannot be the case, we think at least that the railroad be assured and any successor organization that does exist be assured of the utilization of the Railroad right-of-way, and properties used for maintenance purposes and for those other business endeavors related to the utilization of land that are so important for vital operation of railroad properties. We're concerned also of the regulatory structure that the State might be required to operate under. The State does not object to regulation by the ICC. Again, our concerns relate back to the fact that we feel it important that the State have the ability to operate the Railroad competitively without artificial constraints imposed upon the Railroad by the legislation that would make us less able to do so than the Federal

Government is able to do so today. The final point deals with the operating mechanisms that are being considered for the operation of the Railroad. As you will notice from the report that's before you, we're looking at least four different options. The first is a direct State agency operation. At the other extreme is the option of full private ownership. Some other options are in the middle, including a State authority that could operate the railroad itself or a State authority that would be able to provide capital for the capital needs of the Railroad and also to provide for a concessionaire or a private operator to operate the Railroad on behalf of the authority. We have established a working group on the executive side working with the legislature. Both houses of the State legislature have established special committees to work with us and with the congressional delegation.

The purpose is to provide the optimum transfer mechanism, to provide input into the Federal legislative process, and to develop jointly the State legislation that will be required to give the maximum flexibility for operation of the railroad in the future. I, on behalf of myself and the department and also on behalf of the Governor, wish to thank you, Senator, for the cooperation of yourself and your staff in getting us to this point, as well as Senator Stevens and his staff. The cooperation has been outstanding and we look forward to a continuation of that as we get to more specific points in the legislation and hearings in Washington. We stand ready to help in any way we can.

Senator MURKOWSKI. Thank you, Commissioner Ward. Is the State undertaking or has it completed an inventory, or are you satisfied that there is an adequate inventory available?

Mr. WARD. The simple answer to that question, Senator, is no, that's not been complete. We don't think that we have an adequate inventory yet. We have done a lot of work in that direction, as the report indicates, and we're pretty comfortable with where we are at this point, but we do need some additional refinements. There's been a lot of work done on the inventory, but there does seem to be a little more needed.

Senator MURKOWSKI. Do you feel that the existing bill provides enough flexibility so that if you established an intermediate management group, that it would be provided, or does that need to be addressed in the bill from the standpoint of the State's attitude toward it now?

Mr. WARD. Well, I think as the bill is presently structured, Senator, the key element would be the agreement that's reached with the Federal Government after the legislation passes. I think the bill provides sufficient flexibility to accomplish that now. But again, we do have some concerns as to some of the specifics that we'd like to see adjusted somewhat, such as, where Federal liability for employee benefits will stop and State liability start and the definition of those parameters.

Senator MURKOWSKI. All right. I think that the study that has been done, which is the one before me, is certainly a compiling of a good deal of information. One area of concern that was brought out in the Anchorage hearings and is going to continue to get a good deal of attention are the claims by the various Native village corporations and some of the regional corporations with regard to

the Railroad's properties. What is the position of the State with respect to that potential litigation?

Mr. WARD. The position of the State is that it would prefer that the legislation solve all the problems. As a practical matter, it probably won't. But it certainly would be preferred if it did. If it does not, and some of those have to be resolved by the State working with the BLM or the Department of the Interior, and the Native groups, the State has had some experience in doing that before with a mixed bag in terms of results. But at least that's a process that we are familiar with.

Senator MURKOWSKI. Well, my question is, Is the State's position that it would prefer the litigation to be resolved before it receives the Railroad as a gift, or is the Governor of a mind to accept it as is with the potential litigation associated with it?

Mr. WARD. Senator, I think it's probably premature to suggest that the Governor would accept it as is, because of not knowing for sure exactly what the "as is" is. So that step would have to be taken first. If all the problems can't be resolved by the Federal legislation, but the remaining problems are not atrociously onerous, the Governor would accept that, recognizing that there probably will be a mechanism to resolve the remaining problems. At the same time, I think there's probably a point where, because of land problems or other liabilities, the Governor would suggest it's not a good enough deal. I don't necessarily see that right now as the way it will come out.

Senator MURKOWSKI. In your earlier testimony you indicated that it was the Governor's position that he would prefer in his administration to see the private sector step in and take over the operation of the Railroad. However, it appears that you've dismissed that, and that the State is the only one in line to accept it as a gift.

Mr. WARD. Yes. I'm sure, as the Governor indicated already in testimony, that the extreme and urgent importance of the Railroad to Alaska is such that those considerations would override his preference for private ownership. However, it is still his preference.

Senator MURKOWSKI. Thank you, Commissioner. I can fully appreciate what this means not only to Alaska but to your particular area of responsibility as a member of the Governor's cabinet. I'm sure that Senator Stevens and myself, as well as Don Young, have not seen even the beginning of the input from the State on what is necessary to make sure that the rights of the State are protected. Also, obviously, we want to make sure that we have a viable railroad here that can do all of the things that it presently does in the future and still maintain a competitive marketplace. I know there were a number of witnesses in Anchorage that were very concerned about that aspect of the railroad, too, and that will be brought out in future testimony today. Again, Commissioner Ward, I want to thank you for your testimony on behalf of the Governor and we'll look forward to working with you.

[Recess.]

Senator MURKOWSKI. Our next withesses are Richard Schiefelbein of the Federal Railroad Administration and Frank Jones of the Alaska Railroad. It's certainly a pleasure to have the official representatives of the Alaska Railroad with us this morning.

Again, on behalf of Senator Stevens and myself, I wish to welcome you to the hearing and look forward to your testimony. I would call on Frank Jones to open the remarks and present whatever testimony he cares to present at this time. Mr. Jones?

STATEMENT OF FRANK H. JONES

Mr. JONES. Good morning, Senator. Thank you very much for the opportunity of being here. We would like to tell you a little update on the Alaska Railroad. I have prepared testimony for you in that envelope. The Alaska Railroad is a common carrier by rail filing all its tariffs with the ICC. It is comprised of 526 miles of main line and branch line extending from Seward to Fairbanks and beyond to Eielson Air Force Base. The main line is constructed of all 115-pound rail. Additionally, we have 128 miles of yards and sidings. In my view, it is in good condition. Based on FRA track standards, our railroad has class 4 track. The overall national average is class 4. A few railroads have class 5 track, but no freight railroads operate over class 6 track. We have 296 buildings used for various purposes, from car and locomotive repair shops, transportation buildings, maintenance and track buildings, to even houses provided for our maintenance forces working in the Interior. The Alaska Railroad has 63 locomotives, 42 of which are in service, 20 are in storage, and we have 1 leased. We have a progressive locomotive rebuilding program to provide for potential traffic increases. We have 1,737 freight cars of which approximately 400 are in the lower 48 earning daily per diem to help offset our foreign car per diem in Alaska. Some of our hoppers and tank cars have reached an age that they need to be replaced. We are in a posture of progressively replacing some of our freight car equipment. Last fall, we acquired 26 used 50-foot boxcars with only 5,000 miles on them. We recently purchased 25 new 100-ton hopper cars and 10 89-foot flatcars for piggyback service this spring. We plan to purchase an additional 50 hopper cars this fall to replace some of our older hopers. We have 44 passenger cars of various types. One train set, or 10 cars, is presently in the lower 48 being refurbished into Amfleet style with electric power. This was made possible by a $4.2 million congressional appropriation. We have 38,000 acres of land of which 1,200 acres represents over a 200-foot right-of-way between Seward, and Fairbanks. The remaining acreage represents our gravel reserves used in maintaining our right-of-way, our port property at Whittier, Seward and Valdez, our classification yards, and lands that are predominantly rented by rail shippers. Additionally, these lands represent our future classification yard sites, railroad industrial parks, and other rail related uses. The value of our total fixed assets, including provisions for retirement of non-depreciable property and depreciation, is approximately $168 million. The book value of our total current assets of the Alaska Railroad as of July 31 represents approximately $28 million. This does not include the 38,000 acres of land. The fair market value of the 38,000 acres of land is approximately $180 million, and the gravel reserves are estimated at $80 million or a total of $260 million. This establishes the total Railroad assets at approximately $456 million. Our current financial picture for fiscal year 1981, including July's figure, show a bottom-line surplus, after depreciation, of $1,456,000, which

is an improvement of $7.5 million over the same period last year. We are on target to achieve our goal for fiscal year 1981 of gross revenues of $38 million with a bottom-line surplus, after depreciation, of $3 million. That surplus will be obligated to capital improvements for the Railroad. The Alaska Railroad, even with the increased traffic volumes for this fiscal year, is still considered a light density line. The criteria of light density line is 3 million gross tons per mile or less, which is used in the lower 48 as an indicator for abandonment. The light density of traffic experienced by the Alaska Railroad, except for the pipeline years, has been the basic reason for congressional appropriations to fund capital expenditures to maintain the Railroad in a good status, giving it the ability to handle increased volumes, thereby enabling it to improve its financial posture with increased volumes. The Railroad will handle for fiscal year 1981 2.9 million tons per mile. We are comfortable in handling an additional 1 million tons at our present level of maintenance. Portions of the revenue received from additional volumes will be used to contribute to the increased maintenance. The Alaska Railroad is becoming a progressive Railroad. This year we will be replacing 23,000 ties, resurfacing 150 miles of Railroad utilizing 83,000 cubic yards of ballast, replacing 2 miles with new trackage, repairing 25 bridges, and purchasing additional rolling stock. We have equiped our freight-hauling locomotives with fuel savers and are in the process of installing positive traction control devices on these units, which will also improve our efficiency and save fuel. We recently resurfaced 40 miles of the railroad to the new maximum authorized speed for passenger trains of 59 miles per hour, an Alaska Railroad first. As most of you know, our standard maximum speed has been 49 miles per hour over the years. We will be doing an additional 40 miles next year. We have introduced piggyback and van service between Anchorage and Fairbanks in 11 hours. Additionally, we have inaugurated the McKinley Express passenger train this year which provides service between Anchorage and Fairbanks in 9 hours and 45 minutes. We are actively pursuing our participation in the export of coal which will aid us tremendously in stabilizing our financial picture. The most important asset of the Alaska Railroad is its people. On October 1, we will have 461 full-time permanent employees that are loyal and dedicated and skilled in their profession as railroaders. In addition, we normally hire 150–185 temporary seasonal people during the summer months to do much of our work—track work and equipment capital maintenance programs. State ownership of railroads is not a new concept. There are approximately 24 railroads in the lower 48 that are owned by States, municipalities, and counties. It is true that these are generally considerably smaller than the Alaska Railroad, but the concept is the same as is with the British Columbia Railroad, which is a larger rail carrier participating in the development of that Province. Employees of the Alaska Railroad are Alaskans, and what we do is for Alaska and Alaskans. The concept of State ownership, in my view, seems fitting and proper. The Alaska Railroad has an extremely bright future as does Alaska. The Railroad offers the most economical means of land transportation. I see the Railroad

playing an extremely vital part in the development of Alaska and its natural resources.

Senator MURKOWSKI. Thank you, Mr. Jones. I think your testimony was very concise in bring before the committee the current status of the railroad. I have a few questions. You indicated that about a third of your locomotives were in storage. Is that normal in the industry?

Mr. JONES. We have more locomotives than what we really require for the volume of traffic that we haul, Senator.

Senator MURKOWSKI. I assume that was necessitated as a consequence of the volume that was done during the pipeline period?

Mr. JONES. It is true. These locomotives are older, but they're still workable and they will do a fine job.

Senator MURKOWSKI. You indicated that you would be handling about 2.9 million tons per mile during fiscal 1981 and you could handle an additional million with the current level of maintenance.

Mr. JONES. Yes.

Senator MURKOWSKI. What was the level of activity during the peak period pipeline construction? I'm just interested in the comparison there. Was it in excess of 4 million tons?

Mr. JONES. Yes, it was. I can get that figure for you.

Senator MURKOWSKI. Thank you. During the pipeline period, did you have considerably more employees of a semipermanent base? You indicated you have 461 now.

Mr. JONES. Yes, that's true. It's my understanding, Senator, that we had at one time as many as 1,200 employees including the temporary seasonal. In the good revenue years of 1975 and 1976, the railroad operating revenues were $42 million and $53 million respectively.

Senator MURKOWSKI. With respect to the contracts that have been recently announced by the media for the hauling of coal from the Usibelli mine to Seward, is there adequate equipment presently in the railroad's inventory to move that volume of coal or will additional equipment have to be organized?

Mr. JONES. In answer to your question, the first year of business is estimated a minimum of 200,000 tons. We think we can reasonably do that well. The seasonal work of our hoppers, in the summer months they are dedicated to the sand and gravel business between Palmer and Anchorage. Presently we're hauling three unit trains per day. That's——

Senator MURKOWSKI. Between Palmer and Anchorage?

Mr. JONES. Yes, sir.

Senator MURKOWSKI. With gravel?

Mr. JONES. And that's utilizing 140 cars at their peak loaded and empty. We see the venture of export coal as being one that has already drawn interest in rapid discharge unloading cars. Many people in the industry that are connected with coal have expressed a desire to purchase those cars. Our hopper cars are common, traditional type that the pockets have to be open manually and they're dumped—they are stationary when they are dumped. The new modern method of loading and unloading is for continuous movement of the train, and the common practice is either to rotary dump, or another concept is a striker plate on opposite corners of

the car which triggers electrically the hydraulic devices that open the pockets of the car and unload 100 tons of car in 8 seconds. We have a test car up here now in Fairbanks, between Healy and Fairbanks. We acquired it in January and it has worked extremely well. It has 45° slope sheets which add to the ability of the car unloading rapidly in adverse weather. It would be my professional advice that this is the way we should go. By rapidly unloading cars, we reduce the number of cars that are required in unit train operation. With having several people now interested from the private industry; it appears that this is the way it will go.

Senator MURKOWSKI. Well, then your response to my question is that you can probably handle it with the existing cars the first year.

Mr. JONES. Yes, sir.

Senator MURKOWSKI. But after that——

Mr. JONES. We will——

Senator MURKOWSKI [continuing]. Does the contract require or in effect obligate the railroad to get additional equipment to handle that volume?

Mr. JONES. Yes, I think after we go over one-half million tons of coal, we will require additional cars. Now as I said, we'll be buying another 50 cars this year, but they, in reality, are really replacing our older models.

Senator MURKOWSKI. So as far as the State's posture, it could look forward to having to make a capital outlay for additional equipment to meet contracts that are being negotiated now?

Mr. JONES. No, sir, I don't see it that way. I see the——

Senator MURKOWSKI. Well, I misunderstood you then.

Mr. JONES. I see the industry—the Koreans have expressed an interest in purchasing rapid discharge unloading cars.

Senator MURKOWSKI. Oh, excuse me. The industry would buy the cars then?

Mr. JONES. Yes, sir.

Senator MURKOWSKI. I see. But the contract has been signed with the Sun Eel Corp.

Mr. JONES. Yes, sir.

Senator MURKOWSKI. Does that propose that some other owner, other than the railroad, own the cars to meet that contract commitment?

Mr. JONES. It's not addressed, and the proposed tariff that we have provides for the utilization of our cars, but I feel very strong that there will be private car ownership in the movement of coal.

Senator MURKOWSKI. Yes, but I'm more concerned with the immediate future, and not ultimately with what we develop.

Mr. JONES. Yes.

Senator MURKOWSKI. I'm more concerned with the commitments that have been made under the contract now, because basically, if the bill goes through and the railroad is transferred, this would be an obligation then of the State. The State would have to assume the position and liabilities of the Alaska Railroad to provide service under that contract commitment. My question then is, to meet the contract commitment that has been negotiated, would it require, perhaps, additional equipment being purchased by the State, or on

the other hand, would it be likely that Sun Eel or some other entity would buy that equipment?

Mr. JONES. Yes.

Senator MURKOWSKI. That's your contention?

Mr. JONES. Yes.

Senator MURKOWSKI. Your contention is that the purchaser of the equipment would not necessarily be the Railroad. Thank you. A couple of other quick questions. Could you brief us on the obligations to retirees or those on medical furlough that have been tenured with the Alaska Railroad?

Mr. JONES. Our employees fall under the Civil Service Retirement Act, not the Railroad Retirement Act. I don't believe I can give you definite specifics as to that total amount, but it is or has been the contribution of the employee at 7 percent and the Federal Government matching it 7 percent. And I believe that differs from the State contribution on the part of the employee of the State. Mr. Schiefelbein has said that he would address that in more detail in his statement.

Senator MURKOWSKI. All right. Well, maybe we'd better wait until Mr. Schiefelbein gets through with his statement. I've one other question. What's the general condition of the railbed between Anchorage and Seward? Does the grade present any problems for the movement of volumes of coal to Seward?

Mr. JONES. We have a 3-percent ruling grade between Anchorage and Seward. A 3-percent grade in railroading in other parts of the lower 48 is accepted. It's been a way of life. I had the privilege of being the superintendent on the Pittsburgh division during my earlier career, and we had a 3-percent grade prior to going into the horseshoe curve, where we operated 75 freight trains a day. It is true that a ruling grade of that type requires more locomotive power to pull the loaded cars over that grade. We envision operating a 70-car unit train with 5 locomotives from Healy to Anchorage and attaching 2 additional locomotives out of Anchorage that would remain idle until they reached the base of the hill just beyond Spencer Glacier, and at that point those 2 additional locomotives would be engaged, take the train over the hill, and as they descended to the bottom of the hill, the locomotives would be disengaged. It's a common practice and you see the same concept in the West. Before I came with the Alaska Railroad, I was president of the Colorado & Wyoming, and it is quite common to see 110-car unit coal trains going across the front range with 7 SD–40 type locomotives, which is a locomotive that is 4,500 horsepower, and they're extremely strong.

Senator MURKOWSKI. Is there any major tunneling that would have to be done?

Mr. JONES. No, sir.

Senator MURKOWSKI. Is there any major work that would have to be done on the line?

Mr. JONES. No, sir.

Senator MURKOWSKI. OK.

Mr. JONES. The track itself is in good shape. The a loop at the point where the 3-percent grade is located, the rail is—creepers are boxed and it has a very stable roadbed.

Senator MURKOWSKI. It's been noted that the rail size is 117 pounds. Is that adequate, or would that have to be upgraded to a 132?

Mr. JONES. A 115 pounds for this Railroad is really very adequate. The Burlington Northern and the Union Pacific have a standard of a 132 and a 136, but their traffic is so much greater than ours that it would be really unreasonable to expect the Railroad to go into that weight of rail at this time. the 132-pound rail would relate to the utilization of perhaps, oh, 50 or 60 freight trains a day, or unit trains coming out of Gillette, Wyo., that number 21 loaded, 110 car trains per day. The density of traffic will dictate the weight of rail that is used.

Senator MURKOWSKI. I see.

Mr. JONES. and our weight of rail is greater than what our volumes require now.

Senator MURKOWSKI. The hopper cars, are they suitable for carrying small vans? My point is, you're going to be going down full under this contractual arrangement, and is it conceivable that as a consequence, that there would be a reduced freight rate back, because you've got to bring the railcars North to reload them again. My question is. Is it compatible with any type of van, or is that contemplated?

Mr. JONES. I don't think the hopper is compatible to a van, but we are looking at other backhauls that hoppers could very well serve a good purpose.

Senator MURKOWSKI. What other backhaul might there be from Seward that would serve such a purpose?

Mr. JONES. Cement, if we export coal to Korea. Korea is one the worlds large manufacturers of cement.

Senator MURKOWSKI. I see.

Mr. Jones. In the event that the Susitna Dam goes through, it would be absolute, ultimate utilization of equipment.

Senator MURKOWSKI. There's a gentleman in among our witnesses today that's been a proponent of Alaska developing its own cement capability, and we may be hearing further from him later. He might not suggest that as an alternative. I very much appreciate your testimony. There's one other question that we've been saving till last, Mr. Jones: If the State does not take over the Railroad, what steps would DOT take, in your professional opinion, to dispose of it, recognizing that it's very likely to be out of the budget?

Mr. JONES. I think Mr. Schiefelbein would be able to answer that.

Senator MURKOWSKI. Mr. Schiefelbein, it appears that you're on. Please go ahead with your testimony.

## STATEMENT OF RICHARD J. SCHIEFELBEIN

Mr. SCHIEFELBEIN. Thank you very much, Mr. Chairman. Yesterday in Anchorage, I presented the Department's position in direct testimony. During the day, I listened to the other testimony that was presented, the concerns that were brought out regarding S. 1500, and I'd like to address those major issues and outline for you the position of the DOT and how we feel that this indeed is a very workable process that can benefit the State very greatly. First,

Secretary Lewis asked me to pass on to this committee that he would much prefer to be here today than being involved as he is in the PATCO situation.

Senator MURKOWSKI. We can understand that.

Mr. SCHIEFELBEIN. It is only the PATCO situation which is keeping him in Washington. Secretary Lewis has described several times, when the President asked him to be Secretary of Transportation, three major issues that the President wished him to address. One of those three issues was very clearly to get the Government out of the railroad business. This involves Conrail, and this involves the Alaska Railroad. This involves research and development that we're doing which is not related to the safe operation of railroads, but it is much more economic research. A reduced Federal budget simply cannot support these types of expenditures. There are certain things the Government does not do well, and operating a business enterprise is indeed one of them. I've heard it suggested that perhaps the Department's support of S. 1500 may be a ploy, that if the bill doesn't pass, the Alaska Railroad will go on forever as it's always been. I think that underestimates the resolve of this administration not to be in the railroad business.

If you'll look closely at S. 1500, not only does it say that if the transfer does not happen then the Secretary is free to dispose of the property, but also there's another conforming amendment near the back of the legislation which also takes away DOT's basic authority to operate the railroad. So while the first provision may be permissive and allow the Secretary to dispose of the property but not require him to, the second change very clearly withdraws the Secretary's authority. As you are aware, a Federal agency cannot do anything that it does not have specific authority for. If this legislation passes and a transfer does not happen within 13 months, the Secretary cannot run that property, and is authorized to dispose of it.

The Secretary would, as in the Conrail case, attempt to find an individual or a group or several groups which would continue to operate the property as a railroad; but failing the ability to find a private entrepreneur to do that type of thing, the property would be disposed of as excess Government property. It is not a ploy. I wish to emphasize very seriously that the budget will not support this. It's a function that is no longer necessary for the Federal Government to perform, and the Department and the administration are very serious about transferring this and very serious about working closely with the State to make sure that it's a smooth transfer, but indeed that there is a transfer.

Another issue which came up more than I had expected it to yesterday was the reversion clause. That clause basically says that if, during the first 10 years after the property, the railroad, is transferred to the State of Alaska, the property is used in a manner which interferes with rail operations, that the Federal Government will take the property back. I don't see that happening. The concerns that were expressed seem to be that the Federal Government really wants this property back. First off, I don't see very many situations that could trigger an event which would be land use that would interfere with the property. Perhaps building an apartment building across the railroad tracks; I think that it is

hard to disagree that if an apartment building was built across the railroad tracks, whoever's running it isn't very serious about running a railroad. This is not a land transfer. This is a transfer of an operating railroad entity. I think also that the presence of that provision, even though it's inconceivable that it could ever be exercised, actually protects the interests of the State of Alaska.

There are arguments in Washington against the type of transaction where we would give a valuable property as a gift to a State, particularly a State that is itself in reasonably good financial shape. The reversionary clause makes it clear that we're not giving a gift to the State, but indeed we're giving it a transportation system and that the State will continue to operate it as a transportation system. In order to operate it as a transportation system, there are basic items that the railroad needs. It needs its rights-of-way, it needs the ability to operate over them, and being a business enterprise, an enterprise which has to maintain its own properties, it also needs access to its gravel reserves; and the bill would assure that the State, or whatever agency the State designates to run this railroad, had access to all of those lands.

The State legislature and the testimony of Senator Bill Ray yesterday raised several issues that the State felt needed to be resolved before it could accept this transfer. I'd like to go over the principal elements there, all of these under the overview that there is a transfer closing agreement required in this legislation. During a 6-month period, the DOT and the State would sit down to work out the details, but I'd like to give you the overview of the issues that the State was asking answers for. The first was a concern that there was land in the vicinity of the McKinley Park station which was going to be reserved to the Secretary of Transportation or the Secretary of Interior and not be transferred as part of the Railroad. The Railroad owns 18 acres of land adjacent to the McKinley Park station. All of those except the right-of-way and a small track that you can turn a train around on are already administered by the Department of the Interior. The Alaska Railroad's landholdings adjacent to the station include part of the airport, the store, the gas station and some of the camping lands, none of which have anything to do with railroading.

The provision which excludes the transfer of lands adjacent to the McKinley Park station simply excludes the transfer of lands that never had anything to do with the Railroad in the first place, so it's not taking anything from the Railroad. The employee issues come first in the accrued annual and sick leave that the employees have earned and then in the retirement. The accrued annual and sick leave—first, it would be very difficult and, I would believe, rather inequitable to transfer these employees and take from them those rights that they have earned over many years of Federal service. The payment of annual and sick leave, when those employees take them after the date of transfer, would indeed become a responsibility of the State or the State agency.

Senator Ray's concerns were that by setting up a second type of system in the State, we will have established a precedent which would adversely affect the State's own leave systems and the retirement systems. We think that there's another way to look at this. I would say that if the State eagerly jumped up and created a

new system that looked like the Federal system, that indeed it would have a precedent and that the other State agencies would have good reason to look to that as a precedent. But if, as part of Federal legislation transferring a valuable asset to the State, this is a requirement of the transfer, I'm not sure that it really falls in the realm of a voluntary action by the State, which would have been a precedent. I think that a very strong argument can be made that this is not a precedent for other State actions. The retirement is a slightly different issue. We often view retirements as an obligation of a corporation to pay, out of its current earnings, those employees who used to work for it. And when we talk, it appears that an unfunded pension liability seems to be floating through this legislation. The civil service retirement system isn't quite that way. It's an employee-employer contribution system into a trust fund. The employees on the Alaska Railroad who are Federal employees have 7 percent of their gross salary deducted and put into the civil service retirement fund. The Alaska Railroad, in this case the DOT, also puts in 7 percent, a matching share.

There is an additional amount that can come up at the end of a fiscal year, usually in the range of a percent or two which covers the funds, and that's an employer contribution. But that fund itself covers the employee once the employee retires. If an employee leaves the Alaska Railroad, the Alaska Railroad does not have to find a way to take some money out of its revenues to send a check to that employee. It had made its contributions over that employee's working career to Civil Service Retirement, and that fund has to find a way to send a check to the employee. So there's really no unfunded liability on the retirement issue. That's a currently funded issue and is really one of the current benefits that you would pay as part of the salary. There was a concern on the part of the state that they needed a complete inventory of the lands to be transferred under this bill. First, I would point to the closing agreement, which would be 6 months after the passage of the act, in which detailed, or as detailed as possible, descriptions of the property would be included in the agreement. Second, I would point out that we have developed and made available to the State a document entitled "Profile of the Alaska Railroad Landholdings." This is not a legal statement of the boundaries as you would find in a deed, but it is a good description of what the landholdings of the Railroad are. It's important to realize that some of the Alaska Railroad landholdings have never been surveyed, and a clear, legal description would be difficult to come up qith at this time. The Government would propose to give a quitclaim deed to the state for this property. I think it's important to realize that a survey of the type that would be required to give the State the complete inventory it would like to have would cost in the range of $2 million. I'm not sure that that is necessary, particulary at that price. There was a question, also, of the real and personal property which is reserved to the Secretary of Transportation and not transferred to the State under this transfer. The implementing agreement would identify all of this property. In good measure, this provisioin is in the bill to make sure that the properties which shouldn't be transferred aren't transferred and to assure that the Secretary has access to things like employee records for employees who have

already retired or who are on medical disability who themselves may never even transfer to the Alaska Railroad; that type of real property would be reserved to the Secretary, or at least the right to get at that type of property would be reserved to the Secretary, so he can continue to serve out his responsibilities to those employees. The rights, liabilities and obligations, which is a provision of concern to the State, is really an isse that can be adequately be dealt with in the closing agreement. It's an issue that has been the subject of meetings between the DOT and the State. It is indeed the clear transfer of the Alaska Railroad and all that is the Alaska Railroad to the State, and it's a picking up of items such as loss and damage, the employee agreements. The employee agreements, which I've heard described as open-ended, are very similar to other railroad operating union agreements. They're agreements which extend themselves in each negotiation period and are not dissimilar from the other agreements which are involved in operating railroads in the country. It's a little different than operating government and a government agency; indeed, the Alaska Railroad is an enterprise and it has got to be operated in that manner, and its employees are represented by unions that represent similar employees elsewhere in the industry.

Senator MURKOWSKI. Mr. Schiefelbein, are you stating that there is virtually no unfunded liability associated as being outstanding against the railroad?

Mr. SCHIEFELBEIN. In the retirement system there would not be.

Senator MURKOWSKI. There is none, OK.

Mr. SCHIEFELBEIN. In the annual and sick leave, there would be. If someone had accrued 30 days of annual leave and went on leave a couple days after the transfer, the Alaska Railroad under the new ownership would pay his vacation pay during that 30 days of leave. So portions of this are unfunded. The retirement itself is funded.

Senator MURKOWSKI. The fund that was set up under the Civil Service retirement law would cover the entire Federal liability which would be incurred up to the time of the transfer to a State plan?

Mr. SCHIEFELBEIN. Yes. The legislation proposes keeping current Alaska Railroad employees under the Federal plan and having the State make the 7-percent contribution plus whatever the year-end adjustment is.

Senator MURKOWSKI. Thank you.

Mr. SCHIEFELBEIN. The DOT supports this legislation. It believes that this Alaska Railroad can best be operated by those whom it serves and those who have a need for it, principally the State of Alaska. We would support whatever process the State found most beneficial, whether that be a direct State agency operation, some independent authority, transportation authority to run the railroad, or a private entity, if the State chose to go that way. Any of these are very workable ways of operating the property. Each of them has its own advantages and disadvantages, and those advantages and disadvantages relate to the State's needs, and it would be presumptuous of us to decide which was best for the State. I will assure you that we will work with whichever system the State decides is most advantageous to it and work very diligently to

make sure that the transition of this railroad from Federal ownership to State ownership goes smoothly and recognizes the needs of the State, the employees, and the shippers. Thank you.

Senator MURKOWSKI. Thank you very much, Mr. Schiefelbein. I have one other question which may be answered by either one of you with regard to the enabling legislation which authorized the establishment of a railroad not to exceed a thousand miles in length. I think you've indicated that the railroad now operates over 526 miles. What, in your opinion, would the rights be to this additional 470 miles that was authorized under the Organic Act of 1914?

Mr. JONES. I believe the wording of the act——

Senator MURKOWSKI. Would the State have the right to go out and extend this railroad under the Enabling Act?

Mr. JONES. That's a difficult question. I think the wording of the Enabling Act says that the Federal Government will construct and operate up to 1,000 miles of railroad to develop the territory of Alaska and its natural resources.

Mr. SCHIEFELBEIN. There would be no restriction, Senator, on the State expanding the railroad. That legislation wouldn't keep the State from expanding the railroad.

Senator MURKOWSKI. We're talking about giving to the State whatever right the Federal Government has in the railroad. My question is, can the authority to expand the railroad which was contained in the enabling legislation be transferred to the State?

Mr. SCHIEFELBEIN. There's no right-of-way to go with it. The State could clearly get that right, but the——

Senator MURKOWSKI. There's no right-of-way?

Mr. SCHIEFELBEIN. There's no right-of-way in that.

Senator MURKOWSKI. Was there a right-of-way to start off when the railroad was established?

Mr. SCHIEFELBEIN. No, it's just an authority——

Senator MURKOWSKI. Does that mean the Federal Government obtained the right-of-way for the Railroad it was going across public lands?

Mr. SCHIEFELBEIN. Yes. The State could indeed have the authority to go the full thousand miles or probably any other number.

Senator MURKOWSKI. But would the State have the same right that the Federal Government has as the holder of the public domain to simply use it for the Alaska Railroad? Would the State have the same right to say, "OK, we want to extend the Railroad 400 miles across public domain"?

Mr. SCHIEFELBEIN. The Secretary's right of eminent domain does not transfer. The State, of course, has its own authority and right of eminent domain within the State. There's one provision here dealing with patents over privately held lands which have not been exercised very often and which had been repealed as far as highway and other forms of transportation went, which would have permitted the Government to come and take, without any compensation, the lands that have been in private hands for quite some time now. That hasn't been exercised and that right, which was included in the 1914 act, does not transfer.

Senator MURKOWSKI. Well, the State doesn't have any right of eminent domain on Federal land.

Mr. SCHIEFELBEIN. No, but there are procedures by which transportation corridors can be built though Federal lands, and this has happened in places over the country.

Senator MURKOWSKI. Is it possible for the counsel for the railroad to research this particular question? I'm sure that the State is very interested in having an answer to this question at this time.

Mr. SCHIEFELBEIN. I can have the FRA counsel research that and develop an opinion for us on it.

Senator MURKOWSKI. For purposes of the record, it may be helpful to clarify that the question to which we are seeking a response is whether in transferring the Railroad to the State, the Federal Government can provide a right of eminent domain over public land to the extent of those 470 miles provided for by the enabling legislation. It could be very vital to the State's interest.

Mr. SCHIEFELBEIN. I will have an opinion developed on that and provide it to you, Senator.

Senator MURKOWSKI. I very much appreciate the testimony, Mr. Jones and Mr. Schiefelbein. I have no further questions. We certainly appreciate you making yourselves available and the excellent testimony which you've provided for us this morning. It's been most enlighting, and I think it's particularly gratifying to note a very positive attitude which you officials have expressed toward the posture of the Federal Government in the disposition of the Alaska Railroad. Thank you.

Mr. JONES. Thank you very much.

Mr. SCHIEFELBEIN. Thank you, Senator.

Mr. JONES. On behalf of the people, we thank you very much for your continued interest.

Senator MURKOWSKI. Thank you. I can assure you we're all very interested in the Alaska Railroad. I would remind you all that the hearing record will be open for 30 days for the submission of further testimony. the next witnesses may submit to the Chair the prepared text of their testimony. It will be printed in its entirety of time. I would ask that the next witnesses, Mayor John Carlson, the mayor of the North Star Borough, and Mayor Burnett come forward. Madam Mayor, it's a pleasure to welcome you to the hearing this morning on the disposition of the Alaska Railroad.

## STATEMENT OF HON. RUTH BURNETT, MAYOR, CITY OF FAIRBANKS

Mayor BURNETT. Thank you, Senator. On behalf of the city of Fairbanks, I welcome the opportunity to testify before this committee. Our railroad is a most basic infrastructure item and its importance to the interior as well as the State of Alaska is well established. The Alaska Railroad has proven to be an ecologically sound investment in development. The future economic viability of the railroad will depend on its ability to expand to the proposed lengths with Canada, Prudhoe Bay, and Valdez. Therefore, the importance of the State's control of the corridors is essential. The existing Alaska Railroad has provided dependable service to Alaskans. Rail access to Alaska's mineral storehouse will serve the rest of the Nation as well. We presently have the most efficient management and operation of the system in recent history. I would encourage you in your negotiations to insure an orderly transition

in this area. I have requested the Governor's office to establish a task force to afford those who have concerns a forum. The resolutions adopted by the city of Fairbanks and the North Star Borough covers our joint statement. Thank you very much.

Senator MURKOWSKI. Thank you very much, Mayor. I think it's most befitting to have this testimony from the mayor of the city of Fairbanks. After all, the city owes its location to the railroad. We appreciate your testimony very much. Mayor Carlson, Fairbanks North Star Borough mayor, we welcome you to the hearing and look forward to your testimony.

## STATEMENT OF HON. JOHN CARLSON, MAYOR, FAIRBANKS NORTH STAR BOROUGH

Mayor CARLSON. Thank you, Senator. I'm very pleased to be able to testify before this committee on an issue of keen importance to not only interior Alaska but to Alaska as a whole. I'm even more pleased that this committee has seen fit to come to Alaska to hold hearings in the State on this subject. All of us appreciate the time and effort which you gentlemen are expending on this subject, and we hope that these hearings will contribute significantly to a satisfactory resolution of the issue before us.

I will keep my remarks to you limited, since the borough has adopted, by assembly resolution, a clear and specific policy on the issue of State acquisition of the Alaska Railroad from the Federal Government. This resolution has been embodied in a borough briefing paper on the subject, and it spells out in more detail our views.

In essence, the borough strongly encourages the State of Alaska to actively pursue negotiations with the Federal Government to acquire the Alaska Railroad. We also encourage the Federal Government, through both its legislative and executive branches, to work expeditiously with the State on this issue. Your presence here today, and in Anchorage yesterday is, I think, clear evidence that you are proceeding with the greatest good will and promptness on this issue. In reaching the policy decision to endorse the concept of the State's acquisition of the Alaska Railroad, the borough took into account the significance of the railroad to interior Alaska as a fundamental transportation link in our State.

The Borough believes that the development of large-scale export of interior and other Alaskan coal resources, the construction of a system to deliver Prudhoe Bay natural gas to the lower 48, and the development of a viable instate natural gas processing industry are all dependent upon a sound and well-functioning railroad system. In addition, the development of other mining and timber processing activities in interior Alaska will be largely dependent upon the upgrading and effective management of the Alaska Railroad. Consequently, the development of the Alaska Railroad to transport raw and processed natural resources from and through Interior Alaska will have far-reaching and fundamental consequences to this region's economy and society. In adopting this position, the borough called on the State to be fully aware that the Alaska Railroad under new ownership would require considerable infusion of State capital to upgrade and modernize the system. Furthermore, we believe it is essential to the State also to adopt a policy commitment that the Alaska Railroad at its—at its present extent

is basically a trunk system without the necessary extensions to feed that trunk and make it viable. In this light, the borough has urged the State to consider the feasibility of extending the Alaska Railroad eastward to the Canadian border, northward to Prudhoe Bay, southward to the Prince William Sound area, and northwest to the extensive mineral deposits on the south slope of the Brooks Range.

The railroad issue was discussed extensively here in Fairbanks on July 24 at a joint meeting of the municipality of Anchorage, the city of Fairbanks, and the Fairbanks North Star Borough Assemblies and administrations. The three local government bodies all support State acquisition of the railroad. However, they did express general concern in regard to one fundamental point. That is the future extension of the railroad north, northwest, and east to make it a thoroughly viable rail transportation system. The local legislators wish to insure that no fundamental restrictions are placed on this type of expansion and that any Federal Railroad right-of-way be included as part of any negotiating transfer of ownership to the State. In that regard, we have noted in Senate bill 1500, page 3, line 7 that the unexercised Federal railroad right-of-way would not be transferred to the State.

We would hope that this blanket action could be modified to provide for reasonable designation of Railroad expansion corridors in Alaska. Presumably the Federal Government has already identified such potential corridors as part of its management of the Alaska Railroad to date.

This concludes my testimony. Again I deeply appreciate your presence here and your interest in this important subject. I hope that you and the committee staff will feel free to contact the borough or the city in any of the information or assistance that we can provide. Thank you.

[The resolution referred to follows:]

RESOLUTION NO. 81-33.—A RESOLUTION PERTAINING TO ACQUISITION OF THE ALASKA RAILROAD BY THE STATE OF ALASKA

Whereas, the Alaska Railroad is a key artery in Alaska's present transportation system; and

Whereas, the growth of a diversified economy in Alaska involving the use and processing of Alaska's varied natural resources will require the judicious yet vigirous expansion and upgrading of the existing Alaska Railroad; and

Whereas, the federal government in its capacity of owner and manager of the Alaska Railroad has expressed increased interest in divesting itself of the railroad; and

Whereas, the railroad will require extensive capital investment and additional rolling stock to handle successfully the demands which will be generated by the large-scale export of Healy coal to East Asia, the construction of a delivery system for Prudhoe Bay natural gas, and the development of a viable in-state industry to process Prudhoe Bay natural gas liquids; and

Whereas, the development of other mining and timber processing activities in Interior Alaska will be largely dependent on the upgrading and effective management of the Alaska Railroad; and

Whereas, the successful development of the Alaska Railroad to transport raw and processed natural resources from and through Interior Alaska will have far-reaching and fundamental consequences to this region's economy and society, as it will to Alaska as a whole:

Now, therefore, be it resolved by the Assemly of the Fairbanks North Star Borough that:

*Section I.* The State of Alaska is encouraged to enter in and vigorously pursue negotiations with the federal government regarding possible state acquisition of the railroad facility.

*Section II.* If general agreement is reached by both parties regarding the desirability of state acquisition, the State of Alaska consider the adoption of the following points as its policy guidelines:

A. Any state-appointed board of directors for the railroad reflect equitable regional representation with no less than one-third of its membership being residents of Interior Alaska.

B. Any state acquisition of the railroad be predicated on the state's commitment to provide the funding necessary to upgrade the capital and rolling stock facility of the existing system.

C. Any state acquisition of the railroad be predicated on the state's policy commitment to investigate thoroughly and professionally the feasibility of extending the existing railroad system to the north, southeast, and northwest of the Fairbanks/North Pole area.

D. Any state acquisition of the railroad be predicated on the state's commitment to attempt to contract the operation and management of the railroad to a qualified contractor rather than attempting to operate the system as a direct state enterprise.

*Section III.* Copies of the resolution shall be sent to the Governor of the State of Alaska, to the Commissioner of Transportation and Public Facilities of the State of Alaska, to members of the Alaska State Legislature, and to the members of Alaska's Congressional Delegation.

Passed and approved this 25th day of June, 1981.

Senator MURKOWSKI. Thank you, Mayor Carlson. The Chair will attempt to respond to your concern that the unexercised Federal railroad right-of-way would not be transferred to the State. I refer to the 1914 enabling legislation which reads as follows: "There is reserved to the United States a right-of-way for the construction of railroads, telegraph lines, telephone lines," et cetera. This refers to the Federal Government's inherent right to certain rights-of-way. But, I think there is another point that we need to clarify here. Go ahead, Mr. Phillips.

Mr. PHILLIPS. Section 2(b)(1) of S. 1500 refers to a reservation to the United States over private patented land, that is homesteads and other patented land in the State. That reservation allows railroad or other rights-of-way to be constructed over such lands without compensation to private individuals. This authority hasn't been used for a long time. The reason for not transferring this authority to the State is simply to eliminate the ability of the State to impose a right-of-way over such lands without compensation. The State would still retain the right to condemn private land, provided it compensated the owners.

Senator MURKOWSKI. Thank you. We very much appreciate your joint testimony. We feel particularly pleased that the borough has gone into this as extensively as it has. The recommendations for the extension of the Railroad certainly appear to be consistent with the long-range development of the railroad as was intended initially. I'd like to recognize for the record the presence of Representative Betty Fahrenkamp,, Senator Bob Bettisworth, and Senator Don Bennett, who have been in and out of the hearing this morning. We also have with us Dr. William Wood, who I would call upon as the next witness.

As past president of the University of Alaska and a past mayor of this community, I know of your commitment to the community of Fairbanks. I commend you and look forward to your testimony, Dr. Wood.

## STATEMENT OF WILLIAM R. WOOD

Dr. WOOD. Thank you very much, Senator, for the privilege to appear before you. To shorten my statement, I submit for the

record two articles which I wrote and published. They were published in the Daily News Miner. The first was published on the 13th of May, 1981, and is entitled "The Case for Acquiring the Railroad." The second was published the 20th of May, and is entitled "A Strong Board Is Needed for the Railroad." I think the rationale is fairly clearly stated in those articles. One thing that comes out of the evidence that's been presented this morning is sort of a dictum which I believe needs to be challenged: That the operation of the Alaska Railroad is a function which the Federal Government is not longer willing to perform. It seems to me that while it is an urgent necessity for the State to develop its resources, both mineral and crop, that this development has a genuine impact upon the Nation as well. It is especially important to have available the Alaska Railroad in times of a national emergency. I would like to suggest that somewhere in the legislation that is being developed there be mention made of national defense needs. I simply challenge the dictum that the Federal Government has no concern about what happens with the Alaska Railroad. I want to know who says so and why. I repeat that the development of the resources of Alaska is not just for Alaska; it is for the Nation as a whole.

Further, I would say in connection with the defense importance, that where the wealth lies, there lies the heart also. I don't think the Nation should ignore it.

I think the thing that bothers me most about the proposed legislation is in the section which deals with what is not transferred. The right of the Secretary to exercise the power of eminent domain is not being transferred. I thought that Senator Murkowski's questions on this were very much to the point. I believe that what is required here is a spirit of cooperation on the part of the United States in working with the State of Alaska on getting whatever reasonable right-of-ways are required across public domain. There isn't any doubt in my mind that the State should assume all responsibility for paying for whatever rights-of-way it obtains over private property. What we're talking about here is the fact that the Federal Government would be in a position to block any possible extension of the Alaska Railroad if it should go across public lands not owned by the State of Alaska. This problem needs to be addressed in a spirit of cooperation.

Another thing that did bother me just a little bit about the wording in which some sections of the proposed legislation have been presented, is that there seems to be a kind of a feeling that this is an adversary relationship that's being developed. There's a little tone, undercurrent, if you please, of arrogance here, which is going to make it pretty difficult when it comes down to effecting a commonsense arrangement for the transfer of this railroad. If I could just suggest that those occupying the seats of the mighty might exhibit a touch of humility when they approach such discussions, it would probably expedite the finalization of the arrangements.

Senator MURKOWSKI. I would like to add that based on my brief exposure as a junior Senator, there's a feeling that the Federal Government can't run anything as complex as a railroad. "Fiasco" is the word generally used to describe the Government's experience

with Conrail. Railroads aren't necessarily complex, but the point is well made. The Government hasn't been able to run railroads, and as a consequence the Alaska Railroad is generalized in the overall problem. I would agree with you, Dr. Wood that there is not a good deal of consideration being given as to the relationship of the Railroad as it corresponds to the public ownership of Alaska's lands. We are quick to be reminded in the Halls, the hallowed Halls of Congress that the land belongs to everybody. But when we look at what the Railroad would do for the development of that land which would in turn inure to the benefit of our entire Nation, why, there's no comingling of thought, so to speak. As a consequence, we may be throwing out the baby with the bath water because of Conrail and that's just the way the atmosphere happens to be.

Dr. WOOD. Thank you very much. I would make one other point. The big question is not whether the Railroad should be transferred, but what is being transferred. It's astonishing to me that the Federal Government does not have current an inventory of what it owns in regard to Alaska rail properties. I think it should have a current inventory if it's running a business properly. In transferring a property, I should think that the surveying ought to be the responsbility of the owner of the property. How the transfer is made is really the contention point, I think, as far as Alaskans are concerned and not whether it should be transferred.

Senator MURKOWSKI. Well, it's a gift, you understand.

Dr. WOOD. Well, sure. But you know, you always look a gift horse in the mouth just a little bit, to be sure it's worth taking home. Now I doubt whether under management such as Frank Jones is providing the Railroad there's going to be a need for a State subsidy of any kind once the deferred maintenance, the modernization, upgrading, and extension of the system to serve essential developmental areas and interests are accomplished. That's aobut the only time that the State, I think, is ever going to be called upon for subsidy on this.

Senator MURKOWSKI. Do you think the passenger service can stand on its own?

Dr. WOOD. I'd ride down there every time now if I could get a sleeper from Fairbanks, instead of having to ride on the airplane. I'd like to sleep my way down to Anchorage and back. I think it'd be great. My last point, stems from the fact that approximately 80 percent of the traffic on that Railroad is generated by the interior of Alaska. Therefore, when the State of Alaska established its policy board, interior Alaska interests would like to be proportionately, or at least adequately, represented. I address that in one of the two articles I mentioned earlier.

If we're generating most of the business, we'd like our interests adequately represented. Let's get it done as soon as possible.

Senator MURKOWSKI. I might just for a matter of information indicate that a quick breakdown in the percentage of distribution by commodity groups indicates that 33 percent of revenue tons is from the hauling of coal. That's interior Alaska.

Sand and gravel are 22 percent, petroleum and lubricants are 14 percent, and the rest is manufacturers and miscellaneous, which is primarily the boxcar shipments that come up on the Hydrotrain and so forth. So the majority of it is serving Alaska.

Dr. WOOD. Thank you.
Senator MURKOWSKI. Thank you, Dr. Wood.
[The articles referred to follow:]

[Fairbanks Daily Newsminer, May 13, 1981]

THE CASE FOR OWNING THE RAILROAD

There are likely to be some arguments of validity forthcoming against the state's acquiring the Alaska Railroad, but the positive rationale for such action is dominant, rapidly gaining in public recognition and favor.

Here is a partial case for owning our own railroad:

(a) The U.S. government obviously would be relieved of what it construes at this time as a minor nuisance;

(b) The state would acquire a valuable, vitally significant property;

(c) Operation and management control of an essential component of the state's transportation system would be brought home;

(d) Efficient, responsible rail service is basic to acceptable utilization of both renewable and non-renewable resources; Interior timber, agriculture, including grain and livestock, Southcentral, North Central, Western, and Northern minerals, peatmoss, rock, sand, gravel, petrochemicals;

(e) Rail is more cost-effective than road for heavy and bulk hauling both inbound from the coast for equipment and supplies and outbound for materials and products;

(f) Considered to have relatively minor long-term impact on the environment;

(g) Considered to be less erosive of oasis-type life styles;

(h) Currently, in-state management is qualified, experienced and seemingly eager to work under state auspices rather than distant federal regulatory control and indifference;

(i) While a sound rail system for Alaska would provide some jobs directly for employees on the railroad, it would create many, many jobs indirectly for employees in production, processing, manufacturing and marketing.

As a state separated geographically from its sister states, Alaska is peculiarly dependent upon transportation—multi-modal transportation: air, water, and land, both by road and by rail.

Transportation to, from and within Alaska has grown slowly over the years into a loosely interlocking system, each mode in part dependent upon and in part in competition with the other modes. While not one is what it must become, the weakest link is rail.

With more than 90 percent of its foodstuff imported and virtually no processing or manufacturing of consumer goods in state, Alaska is incredibly vulnerable to disaster. True, the population for so large a land mass and vast expanse of surrounding seas is small, with at least one-fifth of the residents historically capable and attuned to living off the land and the sea successfully.

Yet to achieve a measure of self-sufficiency is more than a dream for Alaskans. It is a necessity, an urgent necessity. Hence, today's emphasis upon the production and processing of our renewable resources, particularly for our own consumption and use. Any surplus production, of course, will be available for export.

Historically, our great fishing industry and coastal timber industry have been only marginally helpful in serving Alaskan consumers in their reach for self-sufficiency. In a somewhat similar manner, the world-scale urea fertilizer plant on the Kenai does little to assist agricultural development in the state. Astonishingly, incredibly, there is no rail connection between the huge Kenai urea plant and the farmlands of the Railbelt area.

A modern rail system designed to haul bulk materials and goods inland from our seaports and outward to bulkloading facilities at tidewater is a major requirement. This special capacity and capability cannot be met adequately by any other mode of transportation in being or in prospect.

To attain even 30 or 40 percent self-sufficiency by the year 2000, Alaska must develop much further than it has its inter-modal transportation system, in particular its rail component.

Quite obviously now is the time for the state to acquire the Alaska Railroad. There is increasing awareness of the significance of this in many parts of Alaska. Local governments, Chambers of Commerce, and statewide organizations have passed resolutions or publicized position papers in favor. The press and media have been supportive. Our congressional delegation seems favorably disposed.

Legislative proposals have been introduced to create an Alaskan Railroad Authority to work out essential arrangements. What's the hold-up? Why not get on with

this vital development task? The time for Alaska to acquire the Alaska Railroad and build it into a strong component of our total transportation system is NOW!

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[Fairbanks Daily Newsminer, May 20, 1981]

STRONG BOARD NEEDED FOR RAILROAD

The case for the state's acquiring the Alaska Railroad is substantial and strong. The proposal before the Legislature to establish an Alaskan Railroad Authority is an appropriate approach to move toward final assumption of responsibility for a vital link in Alaska's multi-modal transportation network.

Assuming that the 1981 Legislature will take positive action before adjournment, the membership of the Authority created will face a challenge of magnitude, loaded with difficulty and requiring the utmost skill and expertise in decision-making for the common benefit, both short term and long range, of all Alaskans.

The board of the proposed Alaska Railroad Authority, by whomever appointed, must be selected with exceeding care. Only the highly qualified, experienced professional or business person with knowledge of finance, management and transportation should be eligible for consideration.

The egalitarian approach, appointing one from this group or region, and one from that, while appropriate procedure for some state boards or commissions of relatively nominal consequence, would be disastrous here. The political approach, returning a favor, handing out a recognition for past service, or giving a job to some ol' constituent who needs one, would be even more disastrous.

The board of the proposed Railroad Authority certainly would be a policymaking corporate-level board responsible for the acquisition, operation, maintenance, improvement of service, extension of service and fiscal stability of the one railroad in the world that directly benefits Alaskan residents.

There are strong Alaskans, at least the essential few, qualified and willing to undertake such basic developmental tasks for their state. They have experience in transportation affairs, in finance, and management, understand the needs and potential of Alaska, have creative imagination, deep concern for the common good tempered by a strong sense of balance between the ideal and the practical.

The board of the Authority might well include at least two members from other states and one from Canada. There are obviously inter-relationships in transportation matters that fully justify this. A clear majority of the proposed board, of course, should be Alaskan residents of maturity, sound judgment and dedication.

The assignment as a board member of the proposed Authority should be a lively one, exciting, time-consuming, complex. It will stretch the capabilities of the most able.

So will drafting and enacting the basic legislation required to establish the Authority properly and to proceed to acquire the Alaska Railroad with all its tangible assets.

What, for example, should be the parameters of the Authority's responsibility? Rail only or including Interior waterways barge service? Or any surface transportation other than by highway? Include the Marine Highway system? Deepwater ports at rail end? Bulk-loading facilities? Station-to-store delivery? Freight only or passenger service also?

Relationship to the State Department of Transportation—what should it be? Operation and day-to-day management to be in-house or by contract to private enterprise? Improve the existing service only, or extend it? Where? From the Kenai industrial complex to join the ARR at Moose Pass or at Hope? To the Delta Junction agriculture project and Fort Greely? To the industrial complex and major new dock at Valdez? To the Beluga coal fields? To join with the Canadian rail system? West to the mineral districts of the Kobuk, Seward Peninsula, Brooks Range? North to the Yukon and beyond? Self-supporting rail service when and under what conditions?

There is a risk in all of this, but also opportunity unlimited for Alaska tomorrow. No ordinary board dare undertake so challenging an assignment.

Senator MURKOWSKI. We'll proceed to our next witnesses, Carleta Lewis, the mayor of North Pole, and John Young, the police chief.

## STATEMENT OF JOHN YOUNG, CHIEF OF POLICE, NORTH POLE

Mr. YOUNG. I'm here on behalf of Mayor Lewis. She wasn't able to make it today.

In the interest of brevity, do you want me to just issue you a prepared statement?

Senator MURKOWSKI. We welcome brevity to the hearing. Would you introduce yourself?

Mr. YOUNG. I'm John Young, chief of ce of North Pole.

Senator MURKOWSKI. Good. We welco ou to the hearing, Mr. Young, and welcome your testimony.

Mr. YOUNG. The railroad is very important to North Pole. It bisects our town. It runs right through the middle of town. It has been influential in attracting businesses to our town. It provides services to the North Pole Refinery. In the near future it will be providing services to a grain processing facility we have coming on line in the near future, and hopefully a grain storage facility that the State is planning in the North Pole area. So the mayor and the City Council of North Pole definitely want to see the railroad remain a viable entity in the interior area. We firmly believe that an expansion of the railroad and an upgrading of its facilities are in order to maintain its viability with the growth of the state economy. A second point, on a more local level and a more sensitive issue to our city council, is some of the arbitrary actions that we have suffered by the railroad in the past. We only have four street crossings that cross over the railroad, and as I say, it does bisect our town. Last summer the railroad, without anyone else's knowledge, while they were upgrading these crossings, closed two of them and didn't inform us about it until we finally called them later and said, "Are you going to fix them?" We've had some difficulty dealing with them. I'm not sure if that's just bureaucracy in general, but the mayor and the council do feel that if the railroad was under State management, we would have an easier time gaining response from the railroad management and we would have a greater opportunity for input to the railroad. On behalf of the mayor and the city council, I thank you for the opportunity to address this forum and I have no further statements.

Senator MURKOWSKI. Thank you, Chief Young. I might ask, has the matter of the crossings been resolved?

Mr. YOUNG. It depends on to whose satisfaction. The railroad's satisfaction, yes. They own the land. They allowed us permission to have those crossings some 28 years ago. They have since denied that permission, so they're satisfied. Our city council is not satisfied. They have seriously considered litigation.

Senator MURKOWSKI. The crossings are not available?

Mr. YOUNG. No, they are not available at the present time.

Senator MURKOWSKI. At the current time. Well, I would suggest that we're going to be taking a short recess at 12:30 and you would have an ideal opportunity to corral some people that have testified earlier.

Mr. YOUNG. Thank you, sir

[The statement follows:]

STATEMENT OF HON. CARLETA LEWIS, MAYOR, CITY OF NORTH POLE, ALASKA

The City of North Pole supports the state acquisition of the Alaska Railroad. A strong railway system can be instrumental in the orderly growth and development of our state and its resources. In recent years, the presence of the railroad has assisted in the growth of North Pole, providing transportation for products from the

North Pole refinery. Plans are currently underway for a grain processing facility and a grain storage facility in the North Pole area. Our status as a railhead was helpful in attracting these businesses.

The city feels, that should the state acquire the railroad, an immediate effort should be made to upgrade the existing facilities and expand the system. An extension of the line to Delta Junction and beyond should be of primary concern and plans should be made now to expand the system elsewhere in the state to provide the transportation needed to develop our agricultural and mining potential. If the railroad is to remain a viable part of our transportation system, it must grow with the economy.

On a more local level, the city feels that state control of the railroad would provide better service to the residents of the state. The city has had difficulties in the past dealing with the railroad under federal management. North Pole is bisected by the railroad and we have been victims in the past of arbitrary closure of several street crossings that had been in continuous public use for more than 28 years. The closure of these crossings has adversely affected our traffic flow and emergency services response. Our city administration has met with no success in our efforts to resolve the problems with the present railroad management and our city council has seriously considered litigation in an attempt to reopen the crossings. We feel that we would have a more responsive administration and greater opportunity for input if the railroad was under state control.

Senator MURKOWSKI. We would call on the American Train Dispatchers, represented by Randy Cuzak, the Brotherhood of Railway Carmen, represented by Leonard Black, and the International Association of Machinists, represented by Clifford Proetz. You're going to handle it for everybody?

Mr. BLACK. No, sir, the other two organizations were unable to leave their home station of Anchorage to attend this meeting.

Senator MURKOWSKI. Well, please proceed with your testimony, and we welcome you to the committee, Mr. Black.

## STATEMENT OF LEONARD BLACK

Mr. BLACK. Thank you. Mr. Murkowski, committee members, and fellow concerned Alaskans, my name is Leonard Black and I've been employed by the Alaska Railroad for over 15 years. I'm also a union representative of the Brotherhood of Railway Carmen Local No. 67. As journeymen mechanics in the carmen's craft, we are unique in Federal service. There are no others; therefore, we cannot retreat into other Federal agencies as can other craftsmen and many clerical workers and white-collar employees when the Federal Government sheds itself of our labors. Also, we are Alaskans and desire to be employed here whether or not the State of Alaska decides to accept ownership of the Alaska Railroad. The Alaska Railroad now, by direction of the Federal Railroad Administration, is preparing a reduction in force on September 30, 1981, of over 30 permanent employees.

Senator MURKOWSKI. Excuse me, Mr. Black, may I interrupt? Just to clarify for the record, are you addressing for the record as an individual or representative of your union, the Brotherhood of Railway Carmen Local No. 67?

Mr. BLACK. As a representative of the local.

Senator MURKOWSKI. So you're speaking on behalf of your union?

Mr. BLACK. Right.

Senator MURKOWSKI. Thank you, Mr. Black. Please proceed.

Mr. BLACK. OK. This 5-percent reduction will do nothing but impede the Alaska Railroad transfer to another entity, particularly as the railroad is experiencing an upswing in traffic and revenue. Also, with the prospect of even more business and revenue pro-

duced from the coal haul, we see a need for more employees rather than less. This would make the Alaska Railroad a viable entity and a more attractive bargain to anyone interested in acquiring it. Our concerns with S. 1500 are many, particularly those portions dealing with employee protection.

We do not oppose the concept of S. 1500. We wholeheartedly support it and are of the belief that the Government should not be in the position of competing with private enterprise. We are also in complete accord with the other three major unions, the United Transportation Union, American Federation of Government Employees, and the International Association of Machinists, in our goal to gain positive points for employee protection included in this bill. Thank you for the opportunity to express my views on this subject.

Senator MURKOWSKI. Thank you very much, Mr. Black. We appreciate your testimony and the entire testimony will be submitted into the record as presented. Thank you.

Mr. BLACK. Thank you again.

Senator MURKOWSKI. I might mention for the record that we have the written testimony of Clifford Darnell, a railroad employee and member of the International Association of Machinists, and the entire testimony will be included in the record. Also, the testimony written by Clifford Proetz, International Association of Machinists & Aerospace Workers, and president of local 1735, will be entered into the record.

[The statement follows:]

STATEMENT OF LEONARD BLACK

The Honorable Senator Ted Stevens, Mr. Chairman, Committee Members, and fellow concerned Alaskans:

My name is Leonard Black and I have been employed by the Alaska Railroad for over 15 years. I am also an employee union representative, the general chairman of the Brotherhood Railway Carmen Local Number 67.

As journeymen mechanics in the carman craft, we are unique in Federal service. There are no others; therefore, we cannot retreat into other Federal agencies as can other craftsmen and many clerical and white collar employees when the Federal Government sheds itself of our labors. Also, we are Alaskans and desire to be employed here whether or not the State of Alaska decides to accept ownership of the Alaska Railroad.

The Alaska Railroad, by direction of the Federal Railroad Administration, is preparing a reduction in force on September 30, 1981 of over 30 permanent employees. This five percent reduction does nothing but impede the Alaska Railroad transfer to another entity, particularly as the Railroad is experiencing an upswing in traffic and revenue. Also, with the prospect of even more business and revenue produced from the coal haul, we see a need for *more* employees rather than *less*. This would make the Alaska Railroad a viable entity and a more attractive bargain to anyone interested in acquiring it.

Our concerns with Senate bill 1500 are many, particularly those portions dealing with employee protection. We therefore request that the relevant portions of this testimony be included in this bill.

First, although this bill protects the real property and other hardware from abuse or misuse for a period of ten years, it limits the job protection for employees who will stay on with the Railroad to a period of one year. We feel very strongly that this job protection period should be extended to at least the same period of time as the land and facility guaranty: Ten years, if not indefinitely.

Second, the provisions of this bill covering employee retirement protection seem inadequate and incomplete. My proposal would be for employees who elect to stay and work for the Railroad after its transfer be given a choice to retire during the ten year transfer period, with an accumulative total of retirement service years from: (A) The Civil Service Retirement System; (B) The State of Alaska Employees Retirement System; and (C) The Railroad Retirement System.

The choice of retirement system would be up to the individual employee, at the time of his or her retirement.

Employees electing to remain employed by the Alaska Railroad after the ten years would have to make a decision as to their choice of retirement systems at that time. Employees hired after the transfer date will be included in the State of Alaska retirement system.

Third, accrued annual and sick leave by present employees must be guaranteed for the duration of their employment.

Fourth, that references to seniority in this act be defined as: A. Total Federal Government service (tenure); B. Total service on the Alaska Railroad; and C. by craft seniority.

Fifth, that if the State of Alaska decides that it will not be the employing agency, then its exception to the Railroad Retirement Act, the Railway Labor Act, and the Railroad Unemployment Act be revoked.

Sixth, that any Alaska Railroad employee who transfers to the State and is involuntarily separated within the ten year period will receive severance pay under section 5595 of Title 5, U.S. Code, plus credit for years of service with the State on the Alaska Railroad.

Seventh, that at the time of transfer all eligible employees be allowed the accelerated retirement provisions of the civil service retirement program.

Eighth, it is certain that portions of the negotiated agreements between the Alaska Railroad as a Federal agency and the recognized unions will become negated and void, irrelevant, inconsistent and/or impossible to enforce with the transfer of the Railroad to the State. Therefore, those portions will be renegotiated before the transfer is completed.

Ninth, that when the transfer of the Alaska Railroad to the State transpires, the recognized unions will incur tremendous expense in legal and administrative fees to protect our jobs and benefits. We feel that these costs should be borne by the State and/or Federal Government.

Thank you for the opportunity to express my views on this subject.

SUPPLEMENTAL STATEMENT

I am submitting this as additional testimony to be entered into this hearing because of the great concern of the issues involved.

That the entity that assumes the Alaska Railroad also assumes the Alaska Railroad Medical Association and Excess Benefits Plan. This plan is now self sustaining and its curtailment would be a detriment to those now enrolled in it, particularly those who are retired and at this time would be unable to enroll into another such plan.

That is the State of Alaska assumes title and operational control of the Alaska Railroad, it will not be granted the power of eminent domain as is now vested by the Alaska Railroad entitlement act, but that for a period to exceed ninty-nine years it be granted free access to title of land owned or controlled by the Federal Government for use as roadbed right-of-way and of support facilities when there is an extension of the railroad.

EAGLE RIVER, ALASKA, *August 10, 1981.*

DEAR MR. CHAIRMAN: I, Clifford Darnell, a railroad employee and member of International Association of Machinists, am concerned, along with other employees, about certain parts of SB 1500, concerning transfer of the Alaska Railroad to the State of Alaska. I, and most employees, feel the transfer would be a benefit for the ARR in the future, but we are concerned with several items that need clarification.

1. page 5, section (B) and (C), starting with line 8, "the retention of employees for at least one year in their same positions; (C) the payment of compensation to retain employees for one year at or above the salary levels in effect at the time of transfer";

I think the retention should be extended longer.

2. page 7, line 13, "The State shall be the employing agency for purposes of section 8334(a) of title 5, and shall contribute to the civil service retirement and disability fund a sum as provided by section 8334(a) of title 5."

I think all employees should have several options such as:

(a) Have the State pay into civil service retirement for those employees who have only 1-5 years before retirement.

(b) Allow employees to transfer to the State with credit for the same number of employment years and be completely covered under the State program.

(c) Allow and help employees transfer to another Federal agency.

(d) Take optional retirement as in a regular Reduction-in-force (R.I.F.). Which is according to government regulations which state that employees that have 25 years,

regardless of age, or 20 years and are over 50 years of age be able to take optional retirement.

Submitted by,

V. CLIFFORD DARNELL.

INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS,
ANCHORAGE LODGE NO. 1735,
*Anchorage, Alaska, August 10, 1980.*

DEAR MR. CHAIRMAN: My name is Clifford Proetz. I am the president of Local 1735 of the International Association of Machinists and Aerospace Workers.

We wish to go on record at this time as supportive in the transfer of the Alaska Railroad to the State of Alaska.

However, Mr. Chairman, we also request to go on record that we have serious reservations concerning S-1500 in the area of personnel matters. This bill, as written, is wholly inadequate for the protection and retention of Alaska Railroad personnel. These inadequacies outline our position in supporting the revisions submitted by Mr. Carl Saddler on behalf of A.F.G.E., Local 183.

We wish also to express our concern over the pending reductions in force proposed for the Alaska Railroad. These reductions will only succeed in driving away from the railroad those specialized skills which it so desperately needs to maintain effective operation. The work force is already at its lowest in history and can scarcely sustain the operations of the railroad on a day to day basis let alone in an emergency situation.

The potential for a vital service to the State of Alaska and the Nation exists with this railroad. Show the employees a little concern and their specialized skills will not be lost, insuring the achievement of that potential!

Thank you,

CLIFFORD PROETZ,
*President.*

Senator MURKOWSKI. We would call on our next witness, president of Doyon Corp., Mr. Tim Wallis. Mr. Wallis, we welcome you and your testimony, and would ask that you begin at your convenience.

## STATEMENT OF TIM WILLIS, PRESIDENT, DOYON, LTD.

Mr. WALLIS. Thank you, Senator. For the record, my name is Tim Wallis and I'm president of Doyon, Ltd. I have here a summary, and what I'll do is summarize the summary for time's sake. There's a couple of items I would read into the record. We will be submitting at a later date some more detailed testimony, and perhaps also at the Washington level.

Senator MURKOWSKI. As I indicated earlier, this hearing will be kept open for 30 days, so you may submit it at any time up to 30 days.

Mr. WALLIS. Thank you, Senator. Doyon, Ltd., in its effort to develop its lands, believes that we must rely upon the land ownership patterns established by the Statehood Act, the Claims Act, and the recent Alaska lands legislation. What we need now is stability in the status of the lands. There's one section of the bill which creates certain instability and uncertainty as to land title in Alaska. That's section 5, which would revoke Native corporations' vested rights to lands which have been selected under the act. The particular lands are in the area around the village of Nenana. Both Toghotthele, the village corporation, and Doyon, Ltd. were required by section 12 of the Claims Act to select these lands, and the Secretary was required by section 14 of the Claims Act to convey them immediately. "Immediately" has become years, and the difficulty of processing selection applications resulted in only a small portion of the corporations' land being conveyed. Because of the

revocation in section 5 of this bill, there would be no section 3(e) determination for these lands. The Alaska Native Claims Settlement Act and the regulations would be ignored, and valid selection applications for these lands which were filed in 1975 would suddenly be invalid. All Doyon is asking is that the corporations' selections be processed in accordance with existing law and that the 3(e) review process which has already begun be allowed to continue. Thus, we support the position of Toghotthele Corp. and other Native corporations which testified earlier in Anchorage concerning this bill. Recognition of the Native corporations' vested rights in these lands and an orderly determination of these rights under section 3(e) and the existing regulations will allow the corporations to meet with the State and to resolve any conflicts which might remain regarding title to specific lands. That concludes my testimony. Thank you, Senator.

Senator MURKOWSKI. Thank you, Mr. Wallis. For the record, is it your understanding that most of these lands are part of the actual railroad right-of-way, the 200 feet?

Mr. WALLIS. No, they are not involved in the right-of-way. They're basically vacant lands.

Senator MURKOWSKI. Primarily in Nenana?

Mr. WALLIS. Right.

Senator MURKOWSKI. Do you have any opinion as to whether those lands are utilized at the present by the railroad for storage, or any other?

Mr. WALLIS. No, they're not, Senator. They're vacant lands.

Senator MURKOWSKI. So it's not, in your opinion, necessary that the railroad have these lands for their operations currently or in the future?

Mr. WALLIS. That is correct and consistent with Mr. Schiefelbein's statement that they're going to transfer only lands necessary for operations.

Senator MURKOWSKI. This point was brought up in the hearing in Anchorage, as well. It is not limited to the Nenana area; there's other areas. The question is how to resolve this. It's generally the consensus that there's a reluctance, which I'm sure you would agree, of reopening the Alaska Native Claims Settlement Act for the very reason it was so tough to ever get one. Do you have any suggested methodology that might expedite the contended claims that you've indicated you feel you're entitled to?

Mr. WALLIS. I think just delete any reference in the bill to revoking any claims, and let it proceed on as it already exists.

Senator MURKOWSKI. The regulations for 3(e) came out in October of 1980; they were late. The State and this committee will be meeting with the Natives' representatives to review their claims. I assure you, Mr. Wallis, this will receive the committee's attention. It would be helpful, since it appears that you have done some research, if you would advise the committee on what you feel the enabling legislation does or does not do with respect to your claims. In other words does the Railroad Act of 1914 which authorizes a thousand miles of railroad to be developed preclude the Alaska Native Claims legislation? I don't know.

Mr. WALLIS. No, the Alaska Native Claims Settlement Act as it is written has precedent over any other legislation.

Senator MURKOWSKI. That's your firm stand, or is that your opinion?

Mr. WALLIS. That's my opinion.

Senator MURKOWSKI. For the record, I'd like to make the point that there is a need to clarify for the State of Alaska what lands are subject to claims and what liabilities the State is assuming in this area. I would thank you for pointing out in your testimony your concern concerning these claims.

Mr. WALLIS. Thank you, Senator.

Senator MURKOWSKI. Thank you, Mr. Wallis.

[The following information was subsequently received for the record:]

LEGAL MEMORANDUM OF DOYON, LTD.

INTRODUCTION

S. 1500 and H.R. 4278 propose to transfer responsibility for the Alaska Railroad from the federal government to the State of Alaska. Section 5 of these bills directs that "[a]ny claim for the rail properties of the Alaska Railroad under any federal law other than this Act, for which legal title has not vested with the claimant, is hereby revoked." As the following discussion will demonstrate, this provision would violate both the Fifth Amendment and the explicit terms of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1601 *et seq.* (hereinafter "Claims Act" or "ANCSA"), by extinguishing the rights of Alaska Natives, including organized villages within the Doyon region,[1] to property which they are entitled to receive as part of a legislative settlement of their land claims entered into with the United States in 1971.

Pursuant to the terms of the 1971 out-of-court settlement, the Natives exchanged their claims to 375 million acres of land in Alaska as a quid pro quo for a cash payment and title to 40 million acres of land to be selected by Native Village and Regional Corporations from public lands withdrawn by the federal government for that purpose. The proposed bills would revoke the Natives' rights to some of the most valuable lands they have selected and are entitled to receive as part of the exchange. These lands have a present market value of millions of dollars, lie within the townships in which the villages are located and have been historically and traditionally used by the Natives. In contrast to the pending bills, Congress in ANCSA expressly sought to preserve such lands for Native ownership.

The land rights of Native corporations to be extinguished under the proposed legislation are property within the meaning of the Fifth Amendment, which mandates, inter alia, that private property shall not be taken except for a public use. Whether the proposed legislation is constitutional thus is doubtful because some of the interests that would be taken by definition are not necessary to meet an overriding public need. (Although the pending bills would transfer control over land to the State of Alaska, a large portion of this land is not used for any governmental purpose but for proprietary or private purposes.) Moreover, even if the taking were constitutional, it would be extemely expensive for the United States because of the constitutional requirement that just compensation be paid for the land.[2]

A more detailed exposition of these points follows.

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[1] Doyon, Ltd. ("Doyon") is one of the twelve Alaska Native Regional Corporations organized pursuant to the Claims Act. 43 U.S.C. § 1606(a), (d).

The Village Corporations for those villages in the Doyon region affected by this legislation—Nenana, Holy Cross and Tanana—also are organized pursuant to the Claims Act. 43 U.S.C. § 1607(a), 1610(b).

[2] The Solicitor's Office of the Department of Interior, which has an intimate familiarity with the provisions of ANCSA, also has concluded that the proposed bills would result in a taking of property which may be unconstitutional and, if constitutional, which would require the payment of just compensation to the Natives. Memorandum to Legislative Counsel from William H. Coldiron, Solicitor. (May 29, 1981.) Under the Fifth Amendment, just compensation must be paid even where, as in the case of S. 1500 and H.R. 4278, the legislation effecting the taking does not so provide. *United States* v. *Sioux Nation of Indians*, 448 U.S. 371 (1980).

THE IMPACT OF THE PROPOSED LEGISLATION

Pursuant to Section 11(a)(1) of the Claims Act, the Secretary of the Interior has withdrawn certain "public lands"[3] in Alaska "from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, and from selection under the Alaska Statehood Act. . . ." 43 U.S.C. § 1610(a)(1). The lands so withdrawn include lands in the township or townships where Native villages actually are located, as well as lands otherwise in close proximity to the villages ("core townships"). Village Corporations have the collective right to select up to twenty-two million acres from the lands so withdrawn, with the exact land entitlement of each village being dependent upon its population. 43 U.S.C. § 1611(a), 1615(b).

ANCSA explicitly provides that conveyance of the land to the Native corporations—*i.e.*, the passing of legal title—is to occur immediately after selection. More specifically, Section 14(a) states that "[i]mmediately after selection by a Village Corporation . . . the Secretary shall issue to the Village Corporation a patent to the surface estate. . . ." 43 U.S.C. § 1613(a), (b). The Claims Act also provides that, at the same time, the Secretary must issue to the Regional Corporation for the region in which the lands are located a patent to the subsurface estate. 43 U.S.C. § 1613(f). The Regional Corporation's entitlement to the subsurface estate includes the right to all sand and gravel. *Chugach Natives, Inc.* v. *Doyon, Ltd.*, 588 F.2d 723 (9th Cir. 1978).

Pursuant to the provisions of the Claims Act, Village Corporations in the Doyon region and other regions have made their land selections from the lands withdrawn by the Secretary. Some of the lands selected, including lands within the core townships for Nenana, Tanana and Holy Cross, are currently under the jurisdiction of the Alaska Railroad. The Railroad is using the land for many purposes, including rights-of-way and terminals, locations for private business facilities, sand and gravel reserves and future operations and development.[4]

In the absence of the proposed legislation, the Secretary would make determinations pursuant to Section 3(e)(1) of the Claims Act as to which lands now under the jurisdiction of the Railroad actually are used in connection with the administration of the Railroad. 45 Fed. Reg. 70204 (Oct. 22, 1980) (to be codified in 43 C.F.R. § 2655). The Secretary is then under an obligation to convey immediately to the Native corporations the selected lands which are not so used.

The fact that the federal government originally set aside the selected land for the Alaska Railroad, pursuant to executive authority in the Railroad's enabling legislation, has no bearing on the Natives' present rights to lands within the villages' core townships. The fundamental premise of the Claims Act is that the Village Corporations are entitled to the public lands within those townships which enclose or are proximate to village sites, regardless of any prior use by the federal government of that land, excepting only the "smallest practicable tract, as determined by the Secretary, enclosing land actually used in connection with the administration of any Federal installation." Section 11(a)(1) of the Claims Act withdraws such lands for selection by the Natives and the only federal lands excepted from the withdrawals are lands within the National Park System and lands reserved for national defense purposes. 43 U.S.C. § 1610(a)(1). The Railroad's lands, of course, do not fit within either of the excepted categories.

In the light of Section 3(e)(1), Doyon does not claim rights in those lands which may be properly reserved for the administration of the Railroad. Under the terms of the proposed legislation, however, the Railroad would retain lands which are not "actually used in connection with the administration" of the Railroad, as that requirement is defined in the regulations issued pursuant to Section 3(e)(1). Indeed, the Federal Railroad Administration states that the propsed legislation is necessary precisely because, under the applicable regulations and the recommendations of the Land Use Planning Commission (LUPC), "the Railroad would lose up to 90 percent of its lands located in the Village Selection Areas."[5] These lands, which have been selected by the Village Corporations, are the subject of this controversy. While the Native corporations are the beneficial owners of the lands and have a right to

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[3] Section 3(e) defines public lands as "all Federal lands and interests therein located in Alaska except: (1) the smallest practicable tract, as determined by the Secretary, enclosing land actually used in connection with the administration of any Federal installation. . . ." 43 U.S.C. § 1602(e).

[4] Alaska Department of Transportation and Public Facilities, Biven & Associates, ISER, University of Alaska, *An Assessment of the Alaska Railroad Ownership and Operational Alternatives* (July, 1981), pp. 32–36.

[5] "Federal Railroad Administration Analysis of Constitutionality of Proposed Statutory Revocation of Unprocessed Native Claims for Alaska Land Holdings—Profile of Alaska Railroad," p. 5 (hereinafter "FRA Analysis"). In the case of Doyon villages (Nenana, Tenana and Holy Cross), only 339.4 acres of land outside the Railroad's right-of-way are the subject of ANCSA selections, a figure which represents merely 1.3 percent of the Railroad's non-right-of-way holdings.

immediate conveyance, the Secretary has not yet conveyed the lands to the corporations because of practical matters beyond the Natives' control. Consequently, legal title has not passed to the Native corporations and the propsed legislation would revoke their rights to the lands.

THE NATIVE CORPORATIONS HAVE ACQUIRED PROPERTY RIGHTS IN SELECTED LANDS UNDER THE CLAIMS ACT

As set forth above, the Claims Act expressly provides that, upon selection of lands by a Village Corporation, the corporation becomes entitled to immediate conveyance of the surface estate and the Regional Corporation is entitled to immediate conveyance of the subsurface estate. 43 U.S.C. § 1613(a), (b), (f). Thus, once the Village Corporation selects its lands, the Natives acquire present interests in the lands which constitute property rights in both the surface and subsurface estates. As a matter of executive convenience, formal conveyances of title are being delayed, but Congress already has recognized that the Native corporations have no control over the delays.[6] As a necessary corollary, such administrative delays cannot be said to denigrate from the property rights which Native corporations by statute plainly have acquired in their selected lands.

After selection by the Village Corporations, and assuming such selections meet the statutory requirements of compactness and contiguity, the Secretary basically is authorized to perform only three ministerial duties before issuance of the conveyance documents. First, the Secretary may reserve easements for the limited purpose of insuring public access and that international treaty obligations will be respected. 43 U.S.C. § 1616(b); *Alaska Public Easement Defense Fund* v. *Andrus*, 435 F. Supp. 664 (D. Alaska 1977). The reservation of such easements is not at issue here.

Second, ANCSA originally provided that the Secretary must survey lands prior to conveyance. However, recognizing that the surveying process has caused extraordinary delays in conveyancing, Congress amended ANCSA in 1980 to provide that selected lands which have not been surveyed "may be conveyed by the issuance of an 'interim conveyance' to the party entitled to the lands." Alaska Native Interest Lands Conservation Act, Pub. L. No. 96-487, Title XIV, Section 1410, 94 Stat. 2496 (1980), to be codified at 43 U.S.C. § 1621(j)(1). Furthermore, Congress expressly recognized that the surveying process had no effect on the Natives; property rights in selected lands. "[T]he force and effect of such an interim conveyance shall be to convey and rest in the recipient exactly the same right, title, and interest to the lands as the recipient would have received had he been issued a patent by the United States." 43 U.S.C. § 1621(j)(1). Thus, the fact that the Secretary has not surveyed the lands involved here has no bearing on the property rights of Native corporations in the lands.

Finally, prior to the conveyance, the Secretary must make a determination pursuant to Section 3(e)(1) that the selected lands are "public lands." Under the definition of public lands in that section, all federal lands and interests selected in excess of the smallest practicable tract actually used in connection with the administration of the Railroad are public lands which the Secretary must convey immediately and in which the Village and Regional Corporations have property rights. The power of the Secretary under Section 3(e)(1) to determine which lands are public lands subject to conveyance clearly does not mean that the Native corporations are without rights in the lands which are so classified.

In short, the Claims Act unequivocally provides that the Native corporations acquire property rights in lands upon selection, regardless of any delay in conveyance of the lands.[7]

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[6] H.R. Rep. No. 94-729, 94th Cong., 1st Sess. 16, reprinted in [1975] U.S. Code Cong. and Admin. News, 2376, 2382; S. Rep. No. 94-361, 94th Cong., 1st Sess. 10 (1975).

[7] The Department of Justice's (DOJ) reliance on dicta in *Cape Fox Corp.* v. *United States*, 456 F. Supp. 784 (D. Alaska 1978), *rev'd in part*, 646 F.2d 399 (9th Cir. 1981), in support of its conclusion that the Natives do not have enforceable legal rights prior to conveyance must be ignored since the Ninth Circuit set aside, and remanded to the district court for dismissal, the portion of the decision relied on by DOJ. Memorandum to David Stockman from Robert A. McConnell, Assistant Attorney General (July 8, 1981), p. 2.

DOJ's reliance on the fact that the Secretary has some authority to administer the Natives' lands prior to conveyance, as evidence that the Natives have no legal rights in the land prior to conveyance, also is without any merit. The Natives are entitled to all revenues from any leases, contracts or permits received by the Secretary prior to conveyance. *See, infra*, at p. 12. Congress' grant of interim authority to the Secretary was simply a practical way of dealing with the delay in issuing patents or interim conveyances. Certainly, Congress may not be said to have intended that the Secretary, as a matter of administration, could convey to third parties or otherwise extinguish all the Natives' interests in selected lands.

THE PROPOSED LEGISLATION WOULD EFFECT A TAKING OF THE NATIVES' PROPERTY RIGHTS

In view of the property interests created by ANCSA in lands selected by Native corporations, Section 5 of the pending legislation seems clearly to violate the Fifth Amendment. Looking to analogies in related legal precedents, the proposed extinguishment of Native rights in selected lands would be similar to depriving the owner of an unpatented mining claim, who has discovered and properly located the claim, of his rights to use, enjoy and dispose of the claim, without compensation for those rights. The courts repeatedly have ruled that such an uncompensated divestment is unconstitutional. In the recent case of *Freese* v. *United States*, 639 F.2d 754, 757 (Ct. Cl. 1981), for example, the Court of Claims stated the applicable principle as follows:

"It is a matter beyond dispute that federal mining claims are "private property" enjoying the protection of the fifth amendment. Judge Finesilver of the federal district court has nicely summarized the applicable concepts:

"'A mining claim is an interest in land which cannot be unreasonably or unfairly dissolved at the whim of the Interior Department. Once there is a valid discovery and proper location, a mining claim, in the language of the Supreme Court, is "real property in the highest sense." Legal title to the land remains in the United States, but the claimant enjoys a valid, equitable, possessory title, subject to taxation, transferable by deed or devise, and otherwise prossessing the incidents of real property.'

"*Oil Shale Corp.* v. *Morton*, 370 F. Supp. 108, 124 (D. Colo. 1973). Had plaintiff suffered an uncompensated divestment of his federal mining claims, we would have a clear constitutional violation. *See, North America Transportation & Trading Co.* v. *United States*, 53 Ct. Cl. 424 (1918), *aff'd*, 253 U.S. 330, 42 S. Ct. 518, 64 L.Ed. 935 (1920)."

See also, *Cole* v. *Ralph*, 252 U.S. 286, 295 (1919) ["A location based upon discovery gives an exclusive right of possession and enjoyment, is property in the fullest sense, is subject to sale and other forms of disposal. . . ."]; *Shell Oil Co.* v. *Andrus*, 591 F.2d 597, 603 (10th Cir. 1979), aff'd, 446 U.S. 657 (1980) ["It is apparent under *Cole* v. *Ralph*, (citations omitted) that a locater or owner of an unpatented claim, properly located, has a vested property interest therein. This has been universally recognized by the courts."].[8]

The reasoning in the mining cases applies with equal force in this context. In fact, of course, the Natives' property rights in selected lands are far more substantial than the rights of the owner of an unpatented mining claim. While the rights of the federal mining claim owner derive from a gift received pursuant to the federal mining law, (*see*, 30 U.S.C. § 26), the property rights of Native corporations in selected lands constitute compensation for the extinguishment of the Natives' claims to land in Alaska. As Congress expressly stated in a 1976 amendment to ANCSA:

"The payments and grants authorized under this Act constitute compensation for the extinguishment of claims to land, and shall not be deemed to substitute for any governmental programs otherwise available for the Native people of Alaska as citizens of the United States and the State of Alaska." 43 U.S.C. § 1626.[9]

Certainly, if the government's uncompensated revocation of rights to use and dispose of a gift constitutes a violation of property rights, the proposed revocation of the Natives' rights in lands received as a quid pro quo for relinquishment of claims is impermissible.

In the 1980 amendments to the Claims Act, Congress provided further evidence that the Natives have a proprietary interest in all lands upon selection. Congress set forth detailed procedures to insure that the Natives receive all moneys derived from the lands or resources of the lands "occurring after the date of withdrawal of the lands for selection." The Secretary must hold these funds in an escrow account for the Natives until conveyance of the lands to the selecting corporation. Alaska

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[8] In other contexts, the federal courts repeatedly have ruled that a Fifth Amendment taking for which compensation is required can be based on rights substantially less than vested legal title. As the Supreme Court stated in *U.S.* v. *General Motors Corp.*, 323 U.S. 373, 378 (1945), "the constitutional provision (the term "property") is addressed to every sort of interest the citizen may possess." For example, in *United States* v. *Certain Land in Augusta, Maine*, 220 F. Supp. 696 (D. Me. 1963), the court, noting that "the term property is to be interpreted broadly," found that claimants had a compensable interest in condemned land by virtue of restrictive convenants in favor of these lots.

[9] The Federal Railroad Administration's assertion that, under ANCSA, the Natives received only "benefits" or "entitlements" analogous to social welfare benefits (FRA Analysis, pp. 6–7) is directly contrary to Congress' explicit statement that the money and grants under ANCSA constitute compensation for the extinguishment of claims to land.

National Interest Lands Conservation Act, Public Law No. 96-487, Title XIV, Section 1411, 94 Stat. 2497 (1980), to be codified at 43 U.S.C. § 1613, note. Such an escrow account is similar to a constructive trust and provides unequivocal evidence that the Natives acquire a beneficial interest and thus property rights in lands upon selection.

In sum, the proposed legislation would violate the property rights of Native corporations in the lands which they have selected under ANCSA and would constitute a taking of property within the meaning of the Fifth Amendment.[10]

### THE TAKING OF A VAST PORTION OF THE LANDS WOULD NOT BE FOR A PUBLIC PURPOSE AND MAY BE UNCONSTITUTIONAL

Even if the Native corporations were to receive just compensation for the lands which would be taken, the proposed legislation may be unconstitutional because it constitutes a taking of lands for proprietary or private purposes and not for any governmental purpose. The Fifth Amendment explicitly states that a taking must be for a "public use" and the courts uniformly have held that the sovereign power of eminent domain to take property may not be exercised for private use at all. See, e.g., *Thompson* v. *Consolidated Utilities Corp.*, 300 U.S. 55 (1937); 2A "Nichols on Eminent Domain" § 7.1 (1980). Moreover, in exercising its power of eminent domain, the government may take only that amount of property which is a necessity for the public purpose.

The mere fact that the Alaska Railroad serves the public thus does not mean that the federal government can exercise its power of eminent domain to acquire for the Railroad any and all property deemed desirable or convenient for its operations. A common carrier serves both the public and itself (2A "Nichols on Eminent Domain," § 7.5211), and condemnation powers may not constitutionally be invoked solely in furtherance of its private interests.[11] Under the proposed legislation, however, a substantial part of the property to be taken from the Native corporations is not needed for the Railroad's operations, but either benefits private users of the Railroad or simply saves the Railroad money. Neither of these purposes meets the "public use" requirement of the Fifth Amendment.

The Federal Railroad Administration has stated that the proposed legislation is necessary in part to avoid "the direct loss of $230,000 per year in lease revenue." FRA Analysis, "Profile of Alaska Railroad," pp. 5-6. Similarly, the study for the Alaska Department of Transportation, *supra* at p. 4, n.4, concludes that lands leased to businesses are among the Railroad's most important holdings.[12] Clearly, the taking of property for the purpose of retaining these lease revenues generated from the use of the Railroad by private businesses constitutes a classic example of a taking for a private purpose and would be unconstitutional. The proposed legislation

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[10] The Federal Railroad Administration's assertion that no taking of property would occur because the Natives can select other lands (FRA Analysis, p. 7) is totally without merit. Parcels of real estate possess unique value and are not fungible. The government cannot evade the mandates of the Fifth Amendment simply by forcing the Natives to select different parcels of land and thereby decree either that no taking has occurred or that it has provided just compensation to the Natives. The courts repeatedly have held that the condemnor cannot compel an owner to accept other lands as compensation for a taking, even if the lands are equally valuable. *See, e.g., State of ex rel Rich* v. *Dunclick*, 77 Idaho 455, 286 P.2d 1112, 1115 (1955).

Any substitution of parcels of real estate here would be extremely detrimental to the Natives. The Village Corporations have selected lands closest in proximity and most similar in character to the lands of their villages and there is simply no way to equate the value of those lands to the value of any other tracts of land. Replacement lands would be remote from the villages and possibly would be mountainous and even glaciated. Further, the selected lands are just as valuable to the Natives as to the Railroad and different parcels would not have the valuable sand and gravel, coal and mineral resources located on the selected lands.

[11] Thus, a public railroad cannot exercise the power of eminent domain to obtain land simply for the purpose of removing gravel and soil from the land to construct a distant portion of the road, although the use of gravel and soil might be convenient or cheaper for the railroad. *New York & Canada R.R. Co.* v. *Gunnison*, 1 Hun. 496 (N.Y. 1874). Similary, the construction of a railroad power house which would generate electricity, provide for storage of coal and transport water, does not constitute a public use, but pertains to the private interests of the railroad in its business details. *In Re Rhode Island Suburban Ry. Co.*, 22 R.I. 457, 48 A. 591 (1901). The courts also have held that a railroad cannot use the power of eminent domain to lay out a spur track leading to a private establishment if the public has no right to use the track or only can use the track at limited times. 2A *Nichols on Eminent Domain*, § 7.5212; *Chattanooga Terminal R.R. Co.* v. *Felton*, 69 F. 273 (E.D. Tenn. 1895).

[12] As the study points out, under ANCSA, the Native corporations which obtain the lands must honor the terms of the leases. 43 C.F.R. § 2650.4-1. Consequently, the operations of the businesses will not be affected by conveyance of the lands to the Natives.

simply would deprive the Natives of lease revenues which they are entitled to receive under the Claims Act.

The Federal Railroad Administration also asserts that the proposed legislation is necessary to avoid the loss of "19 million cubic yards of gravel and rock reserves" and to save the government substantial sums in replacement costs and loading and transportation costs to deliver the material from private quarters. Id. These are precisely the types of considerations which the courts have ruled do not constitute an overriding public use. Indeed, the Department of the Interior in its Section 3(e) regulations expressly recognized that a federal installation is not entitled to gravel or other materials used in the "immediate future." 45 Fed. Reg. 70204, 70205 (Oct. 22, 1980) (to be codified in 43 C.F.R. § 2655). The fact that lands selected by Native corporations are mineral rich does not make their taking any less a violation of the Fifth Amendment.

THE PROPOSED LEGISLATION WOULD BE COSTLY TO THE UNITED STATES

Even if Section 5 of the pending bills were constitutional, it would be extremely expensive for the federal government. As demonstrated above, Native corporations have property rights in selected lands within the meaning of the Fifth Amendment and the proposed legislation would result in a taking of these property rights. The Fifth Amendment requires that the United States pay the Native corporations just compensation for a taking of their private property rights. The lands involved here are extremely valuable (to the Railroad, the Natives or any other owner), especially in lease revenues, sand and gravel and other minerals, and the government will be forced to pay a high price. It is precisely because the lands are so valuable that the Railroad is fighting to retain them.

CONCLUSION

In summary, Section 5 of S. 1500 and H.R. 4278 would be contrary to the letter, as well as the spirit, of the Claims Act and would effect a taking of property interests in land selected by Native corporations. The proposed legislation, if enacted in its present form, thus can lead to only two possible results: either the provisions relating to extinguishment of Native land rights will be struck down as unconstitutional or the federal government will be required to pay substantial amounts in just compensation for the property taken.

Senator MURKOWSKI. Our next witness is Mr. Bill Martin, representing Sourdough Express. We welcome your testimony, Mr. Martin. Please proceed.

## STATEMENT OF WILLIAM C. MARTIN, CONTROLLER, SOURDOUGH EXPRESS, INC.

Mr. MARTIN. Mr. Chairman, my name is William C. Martin. I am the controller for Sourdough Express, Inc., Fairbanks, Alaska. We are a motor vehicle common carrier of general commodities and household goods. We operate from a single terminal at Fairbanks.

So that there is no misinterpretation, I would like to point out that our company generates a considerable amount of traffic from the Fairbanks railhead. This obvious self-interest aside, we believe that the railroad is an essential part of the existing State transportation system and is essential to the future development of our State's full capabilities. For this reason, we support this bill S. 1500.

We are aware that many feel that it should be turned over to a private organization and operated that way. That is probably an ideal solution. However, to do so on a give-it-away basis would amount to a subsidy of gigantic proportions, and we have all heard subsidy spoken against quite loudly. What private organization can or would pay full market value for it, except with disposal in mind? Therefore, the only viable solution sems to be the bill before us.

We would like to see the bill address the quesiton of what entity would assume the assets and operations of the railroad. We feel

that the bill should insure that there is in place an organization of sufficient structure to insure that the transfer has every opportunity to be a successful, productive addition to our State's transportation system. Just to tranfer title has the risk of dumping a terrific burden upon the State and its citizens.

Without going into details, we feel that perhaps a port authority type of organization, something like that, may be appropriate. We thank you for the opportunity to present this statement.

Senator MURKOWSKI. Thank you very much, Mr. Martin. We appreciate your testimony and particularly your comment on why you feel some type of an authority may be appropriate. I think that you will find many of your concerns addressed during those hearings. I don't assume that they are all likely to be resolved, but many of the concerns that you have addressed are also addressed by others in their testimony and some answers or explanations have been submitted. I'm referring in particular to your concern about what entity would assume the assets and obligations of the railroad. Thank you, Mr. Martin. Is there anyone who would like to testify in the remaining time this morning?

## STATEMENT OF AL GEORGE

Mr. GEORGE. My name is Al George and I'd like to take about 5 minutes of your time, if I could, please?

Senator MURKOWSKI. I see no reason why not. Mr. George, we welcome you to the hearing and look forward to your testimony. Please proceed, Mr. George.

Mr. GEORGE. Well, thank you for taking the time to come from your tasks in Washington to listen to some of the problems.

Senator MURKOWSKI. Well, I assure you it's a pleasure to return from Washington.

Mr. GEORGE. The topic that I would like to touch on are some of the side issues dealing with the right-of-way that I'm afraid are going to be overlooked in the hurry-scurry of this bill.

Specifically, I would like to speak to the land in the Fairbanks area that was involved with the Tanana Valley railway, the old narrow gage that ran from Chena out toward Chatanika with a branch into Fairbanks. The Tanana Valley Railroad went broke in 1917, went through a bankruptcy and was sold at public auction to a speculator from New York who then in turn sold his rights to the Alaska Engineering Commission which became the Alaska Railroad. The Alaska Railroad operated this narrow gage for a period of time. In the 1920's they gradually started a system of track removal starting with the branch from Chena to the junction by the university. Then in 1930 they removed the section from Fox and on out further toward Fairbanks. The only part of the line that remains a viable use section is that section from Happy into Fairbanks and the Fairbanks terminal. In other words, for a period of approximately 50 years there has been no service on these side sections of track. And yet there has been no filing of vacation of that easement by the Federal Government at any time.

Senator MURKOWSKI. Is that trackage still there?

Mr. GEORGE. The trackage is not there. The original railroad was of a very poor construction. In a lot of places, no ballast was put down, therefore, there's not even a good trail to follow on the

ground in many instances. Now, what I'm concerned about is, for example, the fact that the section of Chena Pump Road that runs out to the Chena Pump Campground is constructed on that right-of-way. That's part of the State highway system. There are sections of similar construction out toward Fox, and I think that a check would find that there are quite a few houses the have been constructed on this route. The cloud on the title of all this property could be cleaned up with this bill if it is specifically spoken to. Otherwise, I'm concerned that it would be left open for further litigation. So my request is that this specifically be spoken to somehow in the bill. I have no suggestion for wordage. But in my experience, an interior solicitor today would say that they do have a viable right-of-way. I'm sure that the State of Alaska today, speaking for the highway department, would say they do not have a right-of-way, that this is an abandoned utility easement. I think that question needs to be cleared up and spoken to by this bill. I think the bill is a good bill. I'm just suggesting that it needs some refinement. And that's all I have to say.

Senator MURKOWSKI. We appreciate, Mr. George, you pointing that out. Having some familiarity with the area, I'm aware that in fact the road does go over the old railbed. There's other areas behind the university in the flats where the State has put up for sale at public auction land that has a railroad right-of-way going through it, and to my recollection there's no exception shown on the title report on some pieces. There may be others. But I think the intent of the railroad to maintain interest in those or to waive them to the present holders, should be clarified.

Mr. GEORGE. It's not even very clear in the record what type of title they acquired in the easement. The original land records for the State, the Historical Index with BLM pages 1 through 113 are missing, and that is a rather large gap in time. And so trying to prove in a so-called title trace what the Tanana Valley Railroad acquired, one has to make a lot of assumptions. I've seen people making assumptions end up regretting what they had made. So I think that the bill should forceclose this gap.

Senator MURKOWSKI. Thank you very much, Mr. George. We have Larry Shelver with us. Mr. Shelver, it's a pleasure to have you as a witness.

## STATEMENT OF LARRY SHELVER, PRESIDENT, YUTANA BARGE LINES

Mr. SHELVER. Thank you, Senator. I've been asked by Robert Hasler, vice president of marketing for Knappton Corp., to read his statement into the record. He was not able to be here because of the PATCO problem this morning. I also have a statement from Yutana Barge Lines, which I am the president of.

Senator MURKOWSKI. OK.

Mr. SHELVER. I don't really feel that I'm in any position to answer questions on the Knappton Corp. statement, but the Yutana——

Senator MURKOWSKI. If you'd like to just summarize it and submit it for the record, that would fine.

Mr. SHELVER. Do you have copies of it?

Senator MURKOWSKI. Yes, it is in the record.

Mr. SHELVER. The Knappton Corp., which is a marine transportation business specializing in tug and barge movements in the Pacific Northwest and Alaska, is concerned with some of the provisions in S. 1500. The concerns are that some restrictions might be imposed on the Railroad and that certain proprietary information might be made available to certain entities, namely Sea-Land and Tote. I understand the concern that Sea-Land and Tote have concerning the Alaska Railroad and its competitive stature. However, I think it would be bad policy to amend the legislation so as to restrict the railroad's ability to compete with other carriers. Knappton and ourselves think it would be devasting to the shippers and consumers in Alaska. The Alaska Railroad is a vital artery for the movement of cargoes to and from Alaska. The development of the State will occur in an orderly, economic and prudent manner only if the Alaska Railroad is allowed to avail itself of all opportunities for freight movements and interchanges.

Now, for my second statement. As I stated, I'm Larry Shelver, president of Yutana Barge Lines out of Nenana, Alaska. I also represent Black Navigation from St. Michaels, Alaska; Western Alaska Transportation Co., out of Nenana; and SHAG Mining Co., Ruby, Alaska. All of these companies use various trucking companies and the Alaska Railroad to bring freight to Nenana for final delivery along the more than 2,000 miles of inland waterways in Alaska's interior. Time and time again the rail-barge and railroad combination has proven to be a very important part of the total transportation needs of the bush interior. Anything that would diminish or curtail this service would be a severe blow to the more than 70 bush communities and settlements which we serve. The Alaska Railroad should be allowed to actively compete with the other forms of transportation and should not be tied by rules and regulations solely designed to increase the costs to the consumer.

Yutana Barge Lines, Black Navigation Co., Western Alaska Transportation Co., and SHAG Mining Co., take the stand that all the existing forms of transportation are needed to adequately serve Alaska, and anything that is done administratively to lessen the competition is not acceptable. I'd like to thank you for allowing me to testify.

Senator MURKOWSKI. Thank you, Mr. Shelver. I have a question to clarify the record. The function of your companies collectively has been tied in with the Alaska Railroad out of Nenana, would your operating rights and equipment be affected at all by this transfer to the State of Alaska?

Mr. SHELVER. Not at this time. The Alaska Railroad over the last year has transferred all of the equipment which was previously leased by Yutana Barge Lines from the Alaska Railroad to the city of Nenana. We now lease that from the city of Nenana. The lands that we presently occupy in Nenana are leased directly from the city. There is an arrangement between the city of Nenana and the Alaska Railroad. I understand, as Mr. Wallis indicated, that there's some confusion over who owns part of the lands, but I don't think that involves any of the wharf lands or the lands that are actively used by Yutana and the city of Nenana.

Senator MURKOWSKI. But in addition to the lands, the equipment is not owned by the railroad anymore?

Mr. SHELVER. No, the Alaska Railroad owns none of the equipment any longer.

Senator MURKOWSKI. So it's all owned by either the city or yourself?

Mr. SHELVER. Right.

Senator MURKOWSKI. So there is no concern regarding the need to safeguard any leases, subleases, rights, authorities or anything like that?

Mr. SHELVER. Not that I'm aware of.

Senator MURKOWSKI. Thank you, Mr. Shelver. We appreciate your interest and your testimony.

Mr. SHELVER. Thank you.

Senator MURKOWSKI. Our next witness is Representative Bob Bettisworth.

## STATEMENT OF HON. BOB BETTISWORTH, REPRESENTATIVE, OF ALASKA

Mr. BETTISWORTH. I'm Representative Bob Bettisworth. I'm also chairman of the House Special Committee on the Railroad, and I'm going to be doing a lot of work in months to come. Hopefully Senator Ray and myself will be introduced simultaneously legislation in the State legislature this fall. It will be our endeavor to work with you and Senator Stevens, and Congressman Young, to come up with legislation that will mesh with the Federal legislation so that we won't have conflicts and so that it can go smoothly. The only comment I would make on the legislation as presently introduced, is that it seems curious that the bill imposes restrictions on the State of Alaska if it takes over the railroad in the first instance, but no restrictions if the State does not take it over and someone later takes it over. I would mention that there's already been conversation by members of the legislature to the effect that, "Well, let's just pass up the first opportunity and get in on the second." I don't think that's what I want to do and I don't think that's what the senators want to do. But recognizing that this is a first draft, hopefully we'll be able to make some very substantive changes that will please us all. My greatest concern regarding the railroad is that regardless of who takes it over, that it be operated in such a manner that it can be and will continue to be a real, viable operating railroad. In my view, to be that type of railroad, we're going to need not less land, as may be the case if some of the claims against railroad land prove to be valid and an accommodation cannot be made with the recipients of those lands. This is one of the key issues, that is the land status of the Railroad when it's received. If it's going to be the kind of railroad I would foresee, we're going to need extensive additional rights-of-way as far as the North Slope, Kobuk, the Canadian border, and perhaps Valdez, plus additional trackage on the Kenai.

I believe that with the attitude of the Federal Government, which I wholeheartedly endorse, in relation to railroads, and what I believe to be hopefully a new attitude of the State legislature in Alaska, that this Railroad could help in the development of Alaska and the provisions of basic resources that are going to be sorely needed in the lower 48 in the years to come.

Many of us have been living with the OPEC situation in relation to oil for the last 6 or 7 years. I think it's only a matter of time until other developing nations realize what kind of a hammer they've got with their resources that the United States is dependent on. I can't help but recall, when we're talking about railroads and resources and resource development, the eloquent statements made by Representative Santini of Nevada during the D–2 land debates in trying to convey the importance and the need for developing strategic metals within the confines of the United States where we have political stability. Unfortunately his pleas when basically unheard. This kind of situation is what I foresee the railroad helping to eliminate.

Without rambling on too long, I just want to say that I'm happy to have the opportunity to speak and hope we will be working closely together in developing the kind of legislation that will bring about a good, viable operating railroad in Alaska.

Senator MURKOWSKI. Thank you, Representative Bettisworth. I would certainly agree with your analysis, that at a time when we're seeing 16 to 17 percent of all the crude oil produced in the United States being produced out of Alaska, and the realization that we have some 26 trillion cubic feet of gas that we're attempting to bring forth it's inconceivable that we have anything but an answer for OPEC. The Railroad is an integral part of the development of this country and it can do in harmony with those most concerned about the environment. I would agree that it would certainly be in order for the State to safeguard its right in considering the takeover of the Railroad to insure that it can move in a way that's in the best interest of the balance that we're all concerned with. We thank you for your testimony, Representative Bettisworth.

Mr. BETTISWORTH. Thank you, Senator.

[The statement follows:]

STATEMENT OF BOB BETTISWORTH, REPRESENTATIVE, ALASKA STATE LEGISLATURE

As chairman of the Alaska State House special committee dealing with the transfer of the railroad, I would like to thank you for the opportunity to offer testimony and to say that we look forward to working closely with you on this legislation.

The U.S. Congress established that one of the reasons for having the Alaska Railroad was to serve the development needs of Alaska. Alaska has only begun to develop and it needs a good railroad to continue. It is fortunate that, now when the federal government wants to divest itself of the railroad, the State is in a position that it can take it. It is now our job to work together to see that the transfer of the railroad ensures the continued growth of our State.

With the State looking at taking over the railroad, we see it as a vital element in the development of our many natural resources. As the future economy of Alaska is dependent on these resources, the development of them is dependent on a viable method of transporting them to a market. This dependence on good transportation makes the availability of access for the future expansion of the railroad critically important. Not providing for all possible rights of way now will only cause further delays in the development of our resources.

The President still has the authority to select approximately 500 miles of right of way for the railroad. This opportunity should be used for Alaska rather than forfeited for the lack of effort. Four additional railroad corridors in Alaska have already been proposed—from Fairbanks to Nome, Prudhoe Bay, and Canada and from Willow to Granite Pt. Other areas we should consider extending the railroad to are the Ambler district, the Colville River area, Chitna, Eagle, from the Seward mainline to Nikiski and from Cantwell to Devil's Canyon.

We would also be remiss in giving back rights of way that have already been granted on federally patented lands. The intent of the U.S. Congress in providing

these reservation in patents was to aid the construction of the railroad and the development of the State. To give up these rights of way only to need them back again at some future time seems foolish. I might suggest, however, that if the federal govenrment now wants to further protect the individual landowners by eliminating these rights of way, in doing so they should remain consistent with their intent to aid the expansion of the railroad. Both goals could be met by the federal government purchasing back the required rights of way as they are needed.

The final area of rights of way needing our attention is that of the future use of federal land. There needs to be a committment, or letter of intent, in this legislation that the federal government will cooperate in providing rights of way when they are needed for the expansion of the railroad. This was the apparent intent in 1914 and I am confident that we would get a great deal of cooperation from the present administration. What is needed is a long term commitment to the future of the railroad. As the federal government prepares to transfer ownership, it is important for Congress to reaffirm its support of the Alaska Railroad.

In receiving ownership of the railroad, the State expects to get an unencumbered title to all of the approximately 38,000 acres of land. As part of the title to this land and all additional rights of way, the State also plans to receive the badly needed mineral rights. Railroad operations ranging from safety signal lights to constructing roadbeds require that the railroad have complete control of its land. Any claims that might exist against any of this land should be settled by the federal government prior to the transfer. As the railroad begins operations under new ownership, it should not be burdened with fights over land titles and mineral rights.

Section 3(a)2 of the proposed legislation addresses the State's assumption of the railroad's rights, liabilities and obligations. To assist us in our analysis of the railroad, The Federal Railroad Authority should be instructed to provide us with a complete description of these liabilities and obligations. We firmly agree that the State should be responsible for all operating obligations and litigations after the date of the transfer. However, the responsibility for any claims against the railroad occuring prior to the transfer should remain with the federal government.

The proposed legislation states that all present Alaska Railroad employees will become State employees. It is our intention to establish an independent, non-government entity to operate the railroad. Because of this, the railroad employees will not become direct State employees. This legislation should probably read that the Alaska Railroad employees will become employees of operating entity rather than of the State of Alaska.

Another area of great concern to the State is the federal regulations controlling railroads. The Alaska Railroad, being a federal agency, has not been required to meet all these regulations. Among the regulations is a listing of the allowable ages of parts and equipment. A good deal of equipment owned by the Alaska Railroad will not meet these requirements. If, when the State takes ownership, these regulations are enforced, a large amount of equipment will have to be replaced at a very substantial cost to the State. Since not updating the equipment has caused no apparent safety hazards, it appears there is little justification for the cost of replacing this equipment. To prevent this, the transfer legislation should guarantee the Alaska Railroad under State ownership the same exemptions it enjoyed as a federal agency.

In closing, I would like to summarize the areas we feel need further attention.

1. Rights of way are critically important to the future of the Alaska Railroad; (A) The President still can and should designate approximately 500 miles of additional right of way; (B) Areas that should be considered for the extension of the railroad include: Nome, Prudhoe Bay, Canada, Granite Pt., Ambler, the Colville River, Chitna, Eagle, Nikiski and Devil's Canyon; (C) The unused rights of way, now existing, should not be relinquished to the detriment of the railroad; and (D) This legislation should state that the federal government will provide access across its land for future expansion of the railroad.
2. The State should receive clear title, including mineral rights, to all railroad land and rights of way.
3. Current railroad employees should not become direct State employees. They should become employees of the railroad.
4. The State should not be liable for claims occurring prior to State ownership.
5. The Alaska Railroad, under State ownership, should be given the same exempt status that it now has from the federal safety regulations.

The Alaska Legislature is planning to pass legislation early next year to allow the State to take ownership of the railroad and to establish the entity that will operate it. Hopefully, our legislation on the State level will correspond closely to what you are working with here and both will result in something that all Alaskans will be

happy with. In working for this, I would like to offer any assistance that myself or my committee may be able to give you.

Senator MURKOWSKI. We will recess and reconvene the hearing promptly at 1 o'clock. Thank you.

[Recess.]

Senator MURKOWSKI. This afternoon our first witness is the Honorable Jack Coghill, mayor Nenana. We welcome you as a witness. We are aware of your long association with the railroad and the communities of Nenana and Fairbanks and the State of Alaska, as well. We look forward to your testimony, Mayor Coghill.

## STATEMENT OF HON. JOHN COGHILL, MAYOR, CITY OF NENANA

Mayor COGHILL. Thank you, Mr. Chairman, for allowing the people of the interior of Alaska to testify on this important legislation. I am totally in favor of S. 1500 and have all of the confidence in Senator Stevens and Senator Murkowski that they will shepherd this thorugh the Senate and the Congress to the best interest of Alaskans. In testifying for this bill, I would like to take a little different tact than you've probably heard today. What if the airplane was brought into commercial use in 1835 instead of 1935? What would have happened to the saga of the Great West with all of its thrills and hardships? But also, what would have happened to places like Carson City or Denver, Colo? Many of these communities were stop-off places for the stagecoach and then the transcontinental railroads that link California to the eastern part of our country. As they were established as part of the transportation system, they also started to develop their own economies by providing services to the areas and to the system. Some of them died, and many of these camps became large cities and economic centers for the West. When I was a lad in the 1930's, it was this way in Alaska. We had trails leading to all parts of the State, carrying mail and supplies to all of the camps in the interior. On these trails there had to be roadhouses every 30 miles to service the teams and their drivers. This created an economy along the route. Every roadhouse had a farm to grow oats and hay for the horses, and the feed was put up for the dogs from the nearby rivers. And so a network of trails like the West had started to bud, with talk of the railroad following its path in the Iditarod country. However, in 1933 the first airmail route was inaugurated from there to McGrath and it was not long before all the mail routes were converted to air carriers. And as that happened, many of the small communities of the interior just up and died. But what really died was the true beginning of a land transportation system for Alaska. Now, I'm not knocking the airplane or the progress it brought to our great State. But the orderly development of the natural resources of this land cannot be developed properly unless we have a mode of land transportation that will make it economically feasible. If we do not look to the development of that wealth properly, we'll have just more of what happened to us years ago, where firms came into our country, highgraded the minerals, the timber and all the other resources and then left, leaving the country poorer and unable to be reopened. We could go into a lot of reasons why the Alaska Railroad has not done this or that and why it has not gone

forward, but I think the first and foremost reason is that it was and has been controlled by the whims of the Federal Government back in Washington, D.C. As a member of the North Commission back in 1968 and 1969, we tried to spur the development of the Kobuk area, and although everybody in command back there agreed, it just did not come to pass. We need to take ahold of this opportunity and make it work. We can expand the system to the west as well as to the north and the east, but it will not happen unless we make it happen, and S. 1500 will get us going in the right direction. I feel Alaskans, once in control of the railroad, will be able to plan it and build it to the best interests of the area, the same way that we planned the airports, the highways and the marine system since statehood. If you don't believe me, take a look at what they were then as compared to today. Gentlemen, we could go on to a lot of statistics on tonnage moved and services performed, but I'm sure you have all of this in your files. I know it's great because I see 100-plus freight cars moving through our town towards Fairbanks every day, and I have already asked many times just what would happen to the economy and the cost of doing business in the interior if it were not for the Alaska Railroad. We must keep the system alive, but more so, we must build it for the future of our State and bring it into this era of our time along with all the other modes of transportation, making a complete economic unit out of all of them. If you have any questions, I'd be more than happy to answer, Senator.

Senator MURKOWSKI. Thank you, Mayor Coghill. I particularly appreciate your testimony. I thought your reference to the North Commission and the dedication of those knowledgeable Alaskans that gave of their time and energy voluntarily for the promotion of that effort was extremely worthwhile. I would hope that you and others will continue your commitment to the Alaska Railroad, which is even more necessary now at this time when we contemplate the Federal Government disposing of it. It's through the input from knowledgeable people like yourself that the railroad can hopefully reach the goals that we all hope can be achieved. I commend you for your testimony, Mayor, and would invite your continued interest as we deliberate on this legislation.

Mayor COGHILL. Any time you need any help from us in Nenana, we're ready.

Senator MURKOWSKI. We know we can count on that. Thank you so much.

Mayor COGHILL. Thank you, Senator.

Senator MURKOWSKI. We have Mr. Tom Owen, vice-chairman of the Fairbanks Chamber of Commerce. Mr. Owen, we welcome you to the committee. Please proceed with your testimony.

## STATEMENT OF TOM OWEN

Mr. OWEN. Thank you, Senator Murkowski. The Greater Fairbanks Chamber of Commerce appreciates the opportunity to present our views, desires and concerns for the transfer of the Alaska Railroad from Federal ownership to State ownership. We wish to stress that the Alaska Railroad is vital to our existing transportation network. The recent strike of air traffic controllers makes it clear that we cannot be solely dependent upon any one mode. The

Alaska Railroad is paramount to the developing of America's storehouse in Alaska. The energy, mineral, and even the development of renewable resources such as agriculture is dependent upon a viable transportation system. Extension of the Alaska Railroad is the mainstay hope for this system. The Alaska Railroad is of national importance in that it directly serves five major military installations within the State. The military is a major client for the Alaska Railroad and this national interest seems to have been overlooked by stating that, and I quote from S. 1500:

> Since the government of the State of Alaska has substantial surplus funds because of the growth of oil revenues, the Federal Government believes that ownership of the Alaska Railroad should be with the State government. The Federal Government believes the Alaska Railroad exists primarily for the benefit of the residents and shippers of Alaska; they need and deserve a much larger voice in determining the role they want the railroad to play.

Nonetheless, we concur that the State needs and deserves a much larger voice in determining the role of the Alaska Railroad. We believe the Alaska Railroad should be given to the State in order that its role and existing transportation system, the future development of Alaska's renewable and nonrenewable resources and for the protection of our Nation as a whole, be guided by those closest to the action, to prevent unfair competition between modes and communities. For these reasons, we urge that the railroad be given to the State without reserve as would any other Government surplus transaction. The State is capable of creating a mechanism for railroad operation which, in our view, should encourage day-to-day operation by a private entrepreneur. There are six major elements of the transfer from Federal to State ownership which we feel must be incorporated into the transaction. They are: No. 1, the authority to expand, including the authority to cross national interest lands, rights-of-way to the North Slope, the Ambler District, the Seward Peninsula, Kotzebue, Valdez, and the Canadian Border via the Ladue River Valley, must be assured. Two, the unclaimed right-of-way provided by the Alaska Railroad Enabling Act must be passed on to the State. Three, the Alaska Railroad depends upon its tenants and material sources located upon its landholdings for continued operation. These lands must be passed on to the State without clouded title from Native land claims or any other claims to insure the continued health of the Alaska Railroad. Four, the Alaska Railroad enjoys a freedom from certain governmental regulations because of its ownership status. The Federal Government should recognize this by: (A) passing these privileges on to the State or; (B) upgrading those items requiring waivers to meet standards such as the age of the railcars or; (C) providing for an ample timeframe that the new owners can comply with. Five, that the U.S. Government divest themselves completely of the railroad and it be transferred to the State without reserve. Six, and finally, that an equitable transfer agreement be made to accommodate the Alaskans first and Federal employees second. We fully recognize their dedication and contribution to this State and our concern is for their well-being. Thank you for hearing our concerns.

Senator MURKOWSKI. Thank you very much, Mr. Owen. We very much appreciate your testimony. It will be an important and integral part of the record. We appreciate the Fairbank Chamber of Commerce's commitment and dedication to the continuing posture

of the Alaska Railroad and the development of the community of Fairbanks.

Mr. OWEN. Thank you, Senator. I'm wearing two hats today, and would like to present a letter on my own behalf.

Senator MURKOWSKI. You certainly may.

Mr. OWEN. Thank you. For the record, my name is Tom Owen and I reside at 3747 Erickson, Fairbanks, Alaska. I've been a resident of Alaska since 1964. I'd like to thank you for coming to Fairbanks for these hearings and for giving us an opportunity to testify on a matter of grave importance to the future to the State of Alaska. With just a quick glance at a map of the State of Alaska, it is easy to determine that surface transportation systems, including both highway and the Alaska Railroad, are very small in comparison to most other States much smaller in size. A vertical line drawn from north to south approximately halfway across the State from east to west, will show virtually no highway or rail system in the entire western half of this great State. The Alaska Railroad as it now exists plays a vital part in transporting products for both military and civilian uses. However, there is a need for all surface transportation system, including the Alaska Railroad, to be expanded and upgraded in order that the vast energy and mineral resources of this great State be developed. Development of renewable resources such as farming would also be greatly enhanced. It is very apparent to me that this administration is anxious to cut Federal spending wherever possible. As a result, I do not see a budget for the Alaska Railroad of sufficient size to greatly upgrade and/or expand the current facilities. Based on the above, I feel very strongly that it's in the best interest of the U.S. Government as well as the State of Alaska that the Alaska Railroad be transferred from the Federal Government to the State of Alaska. I agree with most of the provisions of this Senate bill; however, I take exception to one portion in particular. If the railroad is ever to be extended in almost any direction, it is imperative that all unexercised rights-of-way provided for by the Act of March 12, 1914, be conveyed also to the State. Without this grandfather clause, the State could encounter literally years of delay in any expansion effort by conservation or environmental groups that are determined to prevent growth or development in Alaska. I am one of the many Alaskans who enjoy the scenic beauty of this great State. I enjoy hunting, fishing, camping, or just taking pictures of some breathtaking scenery. I also do not want to see every person with his or her D–8 Cat ripping up the countryside. There are many examples in the interior that show that we can have orderly development and adequately protect our fragile environment at the same time. The Trans-Alaska Pipeline, the North Pole Refinery, our farms in Delta, and Joe Usibelli's coal mine at Healy are just a few of these examples. Again, thank you for allowing me to present my views on this important matter.

Senator MURKOWSKI. Thank you again, Mr. Owen. We appreciate that.

We will proceed to our next witness at this time. It's the representative from the Fairbanks Environmental Center, Paul Reichardt.

Mr. Reichardt, it's a pleasure to welcome you before the committee. We look forward to hearing your testimony. You may please proceed.

## STATEMENT OF PAUL REICHARDT

Mr. REICHARDT. Thank you. My name is Paul Reichardt. I am representing the Fairbanks Environmental Center. I'd like to thank the committee for holding this hearing in Fairbanks and providing us with an opportunity to address this issue. I'd also like to thank you and Senator Stevens for providing us with the opportunity. It's very seldom we get an opportunity to provide this type of input in Fairbanks. We think it's very important that the committee see the situation firsthand and hear directly from the people most affected by the issue. The FEC has endorsed the transfer of the Alaska Railroad from the Federal Government to the State of Alaska, and in keeping with that position we strongly endorse S. 1500. We hope that the State can provide better railroad service by improving the physical condition of the line and by providing better scheduling of service. We hope that this transfer can be the best step in providing better rail service between Fairbanks and Anchorage. We feel the railroad can provide an energy efficient, save and convenient means of transportation in the railbelt. Some people question the economics of the railroad. We think that deserves some discussion. Almost all means of transportation receives some type of Government subsidy. Even most walking is done on sidewalks or trails built with public money. Highways and airports receive large Government subsidies. Nobody has ever demanded that highways pay for themselves. We annualy spend millions of dollars on highway construction and maintenance. While commercial flights do pay landing fees, these don't come close to paying even the cost of maintenance, let alone construction. The construction and maintenance of transportation infrastructures has always been primarily a governmental role. Railroads have always been the exception. While they have always received massive subsidies from the Government, the railroads have always built, maintained and patroled their own systems. Also, in this day of growing energy scarcity, we need to look at the energy efficiency of various means of transportation Railroads have been shown to be a very efficient means of transportation, and as the cost of energy increases, this will become increasingly more important. We believe that in future years the railroad will be viewed as one of the best investments Alaska has made. With this in mind, we would like to make a few specific comments regarding S. 1500. One: Section 2(b)(1) in the definitions section states that the unexercised right-of-way included in the Act of March 12, 1914, is not transferred to the State. We strongly support this provision.

Land ownership in Alaska has changed greatly since 1914. Ownership patterns are now confused by State and Federal ownership, national conservation units and Native corporation lands. We feel that rights-of-way for any future expansion should be secured in the traditional manner, including compensation for owners of lands crossed. The crossing of national conservation units is provided for in the Alaska National Interest Lands Conservation Act. Two, section 3(a)(2) of S. 1500 states that the State will assume all rights,

liabilities and obligations at the time of transfer, including the costs for all litigation filed after the date of transfer. We feel that one specific class of litigation should be exempted from this provision. All litigation stemming from the implementation of this act should be paid for by the Federal Government. We feel the Federal Government should do all the legal work required to assure clear title to the State. Three, we are also concerned with sections 5(a) and (b). These provisions set a bad precedent by withdrawing some lands that were made available for Native selection under several acts. We supported passage of the Alaska Native Claims Settlement Act and its many amendments. We also supported the inclusion of amendments in the Alaska National Interest Conservation Act to clarify and aid in the implementation of ANCSA. We feel that these lands were made available for selection in good faith and that the selection rights should not be terminated. We feel this shows bad faith on the part of the Federal Government toward the Alaska Native community and other people who have supported the settling of the Alaska Native claims. This action may be viewed by many as a renunciation of the Native claims settlement and could lead to litigation. Four, we strongly support section 6(b). This provision allows the Secretary of Interior to exercise an oversight function to protect park values within Denali National Park. We feel this provision is important to maintain proper management of the park. Five, we also strongly support section 7 dealing with the reversion of the railroad to the Federal Government if the State fails to continue to provide rail service. However, we feel this provision should be strengthened in several ways. First, the provision dealing with the reversion of land outside Denali National Park and Preserve should be strengthened by removing the words "within 10 years" on line 11 of page 9. This would extend the clause indefinitely into the future. The State is being given a valuable asset, and requiring the State to continue operation of the railroad is not an unreasonable requirement for them to receive this asset. We feel that if at some future date the State discontinues the rail service, that they should either return the railroad to the Federal Government or the value in money. Second, we feel it should be clear that the provisions of 7(b) do not lapse in 10 years, but continue indefinitely. And third, we feel that the enforcement provision in section 7(c) be automatic, and should not require a request from the Secretary of Transportation. Six, section 8 deals with other dispositions. We also support this section, but again we'd like to see the provisions strengthened. We feel this provision should extend indefinitely and that any disposal should be to a party who will continue to operate the railroad. Our main concern is that the railroad service continue and that any future owners be required to continue that service. We hope the committee will consider these points as you finalize your consideration of this bill. And once again we would like to thank Senator Stevens and yourself and the committee for providing us with this opportunity to address this issue of vital importance to the transportation future of Alaska.

Senator MURKOWSKI. Thank you. We very much appreciate, Mr. Reichardt, your testimony and would advise you that the record will be open for 30 days if there is additional testimony that you or

representatives of the Fairbanks Environmental Center would care to submit for the record. I thank you very much.

Mr. REICHARDT. Thank you.

Senator MURKOWSKI. We have as our next witness Jim Jansen, representing Lynden Transport. Mr. Jansen, we welcome you to the committee and certainly are aware of your interest in the railroad and your association with transportation in Alaska. We look forward to hearing your testimony.

## STATEMENT OF JAMES JANSEN, PRESIDENT, LYNDEN TRANSPORT

Mr. JANSEN. Thank you, Senator. As president of Lynden Transport, I appreciate the opportunity to appear before you and comment on S. 1500. At the outset, as a resident of Alaska, I agree that the continued operation of the Alaska Railroad is highly desirable for the proper development of Alaska and its vast resources of natural materials. However, we at Lynden Transport do not believe that the State of Alaska should be permitted to operate the Alaskan Railroad so as to unfairly compete with privately owned, taxpaying trucking companies, such as ourselves, or with water carriers such as Sea-Land and Tote. By way of background, Lynden Transport is a publicly owned company with its stock traded over the counter. It was incorprated in 1947 as the successor of a partnership operating a general freight operation between Lynden and Seattle, Wash. That partnership developed from a local drayage business initiated in Lynden more than 20 years before. Lynden Transport commenced its Seattle-Alaska freight operations in 1953. In 1975 it formed its Alaska Marine Trucking Division to offer water transportation service to Alaska by means of the company's facilities and trailers, but using the vessels of others, such as Tote and Sea-Land. Today, Lynden Transport, Inc., offers the shipping public both motor and water freight services, to, from and within Alaska by means of the company's overland operations and its Alaska Marine Trucking operations. In addition, Lynden Transport has a wholly owned subsidiary, Southeast Alaska Barge Lines, Inc., which provides barge service in the movement of freight between Seattle and Alaska. Lynden is also a prime contractor with the U.S. Postal Service for transportation of mail between Seattle and Alaska.

Lynden has in excess of a hundred full-time employees in Alaska, plus 49 owner-operators. Lynden handles more traffic between the Pacific Northwest and Alaska and within Alaska than any other motor carrier and competes with many other firms in other modes of transportation, including many with greater financial resources, not the least of which is the Alaska Railroad with its Government subsidy coming from taxpayers' pockets. In addition, we compete with many air carriers to Alaska as well as other water carriers. As you, Senator, are aware, many new competitors entered the Alaska motor carrier industry within Alaska while the Trans-Alaska Oil Pipeline was being constructed. However, following the completion of the pipeline, the total tonnage dropped considerably and many of these competitors ceased operations and/or entered bankruptcy. New competitors, many nonunion, are replacing those leaving the market. Moreover, competition from the

Alaska Railroad with its Government subsidy has increased as it engages in selective rate cutting. You are better informed on the amounts of subsidy given the Alaska Railroad during the past many years than I am. As you noted, when S. 1500 was introduced, despite these subsidies, the roadbeds and rolling stock of the Alaska Railroad need substantial injections of new capital. If the Alaska Railroad had been operated by private enterprise, there would not have been so much deferred maintenance and there likewise would not have been predatory rate cutting. It is because of our experience with the Alaska Railroad's selective rate cutting and our fear that the railroad under State ownership will enter the long-haul trucking business, as well as water carriage, that I appear here today. As one who has spent most of his life in the transportation business in Alaska, I certainly agree that Alaska needs the railroad. However, as both an individual taxpayer and as the representative of a corporate taxpayer, I do not believe that the Federal Government should make a gift of a valuable asset to the State of Alaska without reasonable provisions that require the Alaska Railroad to operate at rates which are compensatory and refrain from entering the trucking or marine business. Lynden Transport over the years has clearly demonstrated its ability to compete effectively with other privately owned carriers that are subject to the same rules, regulations and taxes as Lynden. As a Government-owned railroad, the Alaska Railroad will continue to be exempt from all taxes, Federal excise, fuel, property, income, et cetera. If there is no provision in S. 1500 against the Alaska Railroad reducing rates to a noncompensatory level, it will be able, by use of taxpayers' money, to divert traffic from its competitors, such as ourselves, all of which are privately owned and are subject to all of the taxes from which the Alaska Railroad may be exempt. Any subsidy of anything by the State ultimately comes out of our pockets. We do not need or want inflated tax bills. As you are aware, the trend in this great Nation of ours is to get the Government out of business and to reduce the ever-increasing tax burden. Please do not allow this transfer of the Alaska Railroad from the Federal Government to the State of Alaska to become a vehicle for transferring any unnecessary subsidy from the Federal Government to the State of Alaska. Section 6 of S. 1500 does not provide adequate protection to Lynden and other privately owned competitors of the Alaska Railroad. With the gift of the railroad to the State of Alaska, the State will commence business with a zero basis for investment in plant and equipment, which will give it a tremendous advantage in pursuing its predatory rate practices. Lynden would have no objection to competing with the Alaska Railroad if it were privately owned. Lynden indeed has no objections to the State ownership and operation of the railroad if there are adequate provisions to protect the privately owned carriers against unfair competition. I recommend that a provision be placed in S. 1500 to the effect that in fixing rates, the railroad must use the current replacement value of its entire plant and equipment as its capital investment. The State should be required to fix rates on all traffic subject to movements by its competitors that will be at least 150 percent of variable costs, calculated by using the adjusted ICC rail form A, return on investment of capital as found in most revenue

adequacy proceedings. However, in those instances where rates of a competitor may be lower than the Alaska Railroad, then the Alaska Railroad sould be allowed to lower its rates to meet that competition. Lynden also objects to the provision in S. 1500 which would allow the State to be exempt from the provision of subtitle 4, title 45, United States Code. Such an exemption would mean, in effect, that the Alaska Railroad would become both judge and jury on all matters affecting its own operation. Let me make it clear, Lynden has no objection to any subsidy the State may give to the Alaska Railroad to provide services which the privately owned, taxpaying carriers cannot and will not provide. As an example, the transportation of large quantities of coal from the interior to port cities, of the transportation of passengers and their baggage. Lynden does object to having to compete with a Government-owned carrier when that carrier uses our tax dollars to subsidize operations, and in turn, set rates which are unreasonably low. Moreover, we do not believe that the State of Alaska-owned railroad should be allowed to become a long-haul trucking company or a water carrier to unfairly compete with these Alaska transportation segments which are already over-competitive and privately owned and operated. If the Alaska Railroad is given to the State of Alaska, the railroad should be required to price all of its services which compete with those of privately owned carriers without the benefits of a subsidy and with a proper factor being included for the cost of capital. Put another way, we believe the Alaska Railroad should be required to provide all of its competitive services on the same basis as any privately owned railroad must. To these ends, we are willing and prepared to work with the committees to develop proposals that will solve the problems and assure the State of Alaska of a balanced transportation system. Thank you.

Senator MURKOWSKI. Thank you very much for your testimony, Mr. Jansen. There was testimony in Anchorage about the alleged unfair competition between the Alaska Railroad and the trucking industry. I wonder if you could enlighten us, for the record, on the types of commodities that you carry that you feel are basically subsidized on the railroad?

Mr. JANSEN. One example is the transportation of lumber under contract rates which were initiated early last year. The rates were dropped in excess of 40 percent of the current competitive rates, based on certain annual, guaranteed volumes of traffic and certain railcar minimums. It was done in conjunction with the Hydrotrain. Those rates basically took all of that type of traffic from other modes—ourselves, Sea-Land and Tote—and diverted them to the railroad and Hydrotrain. We are certain that that traffic was handled at less than cost. SeaLand did match those rates for a period of time, I think probably below their costs, just as a means of remaining competitive. That's the type of competition that our industry cannot live with and survive.

Senator MURKOWSKI. Would you in your business have transported that type of a commodity over the highway?

Mr. JANSEN. Not over the Alcan Highway, no, sir.

Senator MURKOWSKI. You would have used a water carrier then?

Mr. JANSEN. Yes.

Senator MURKOWSKI. On a through rate?

Mr. JANSEN. Right.

Senator MURKOWSKI. The rate structure that was available to the Hydrotrain and the railroad was not available to you?

Mr. JANSEN. That is correct.

Senator MURKOWSKI. Yet it's your contention that they're all common carriers.

Mr. JANSEN. That's right.

Senator MURKOWSKI. You don't feel that you can be competitive, not because you're not, but because you don't provide the water carrier service which Hydrotrain provides and you can't get Hydrotrain to ship on behalf of your company, is that correct?

Mr. JANSEN. If Lynden had the resources, for example to purchase the marine equipment to operate a rail-barge into Whitter, for example, and could join with the Alaska Railroad to do the same thing, we could have filed the same rate structures. I feel certain that somewhere through the joint routing, either that water carrier, be it ourselves or be it Hydrotrain, or the Alaska Railroad would have had to operate at less than cost to provide those rates.

Senator MURKOWSKI. I guess I'm still a little concerned about comparing apples and apples, because Sea-Land and Tote operate on a tight schedule, that is, with a quick turnaround. They provide a service which barge carriers can't because of their slower mobility. So my point is, do you pay a premium for faster delivery?

Mr. JANSEN. On most commodities, no. Sea-Land, Tote and Hydrotrain have been generally competitive. I would agree with you, yes, that Tote and Sea-Land service is faster than that of the railroad. On the other hand, the Alaska Railroad with Hydrotrain has the ability to do things that Sea-Land and Tote can't do; for example, transport oversize shipments at the same rate per pound. With Tote, you would have to charge a premium for it.

Senator MURKOWSKI. I was surprised to see the analysis of the traffic by commodity groups. Of the overall tonnage that the railroad carries, 34 percent is coal, 23 percent is sand and gravel, and petroleum products are 15 percent. That means only 16 percent is subject to the competition which you expressed concern about in your testimony.

Mr. JANSEN. Yes.

Senator MURKOWSKI. That is just a small portion of what the railroad really carries.

Mr. JANSEN. That's correct. We have absolutely no objection to any type of pricing when it comes to such commodities as coal and gravel, and to a limited extent, the bulk fuel. That type of traffic can only effectively move via rail, and we think it's necessary for the development of Alaska.

Senator MURKOWSKI. I'm wondering if, what you referred to as the true costs were allocated to the railroad, including the cost of money the railroad would suddenly become uncompetitive.

Mr. JANSEN. I think what I said in testimony was that we felt that regardless of cost, we would have no objection to them being competitive with any mode. In other words, if, for example, Sea-Land had a rate that was less than the Alaska Railroad's costs and they wanted to match it we would have no objection to that, as a means of being competitive.

Senator MURKOWSKI. But you indicated that you felt that the total costs of a railroad operation should be borne as true costs. The point I'm making here is that we are contemplating the State taking over the railroad. We've already had the experience of the State in the marine highway system. The marine highway system is heavily subsidized, and provides a significant artery of transportation to those communities that can't be served any other way. Your organization formed a marine highway division, and utilized that service, which is subsidized. You also operate barge service, which is not subsidized. What I see here is that we don't have true apples and apples. We've already got a heavily subsidized State marine highway system. We're anticipating the realities of bringing the railroad into State government. While I understand and appreciate your viewpoint, I'm looking at the realities that if the railroad is going to be accepted by the State, the State's going to want to have the opportunity to have the mechanisms available that the Federal Government had available. What the State contributions are actually going to be, of course, is going to be dependent upon our State legislature. It would appear that we have a gray area regarding how we are going to operate this Railroad and still safeguard the private sector.

Mr. JANSEN. Again, Senator, we have no objection to the railroad being competitive with us. We just don't feel that they should use our tax dollars to under cut our own rates and put us out of business. Two examples of why we are very fearful of not having some protection in this legislation: One, the trucking industry, for the last 40 years, has competed with the Alaska Railroad. This goes back to the days when they were operating Valdez in the winter, and Thompson Pass was closed during the wintertime and open during the summertime. The railroad would operate at a $2 a hundred weight rate during the summertime when the highway was open out of Valdez. The minute the highway closed, it would go to a $4 rate for the winter. It destroyed the trucking industry. This industry has been through some very bleak times. Some good carriers were totally put out of business due to that type of action. So that's one reason we're very defensive. The other reason we're defensive is because we're also fearful of the way the State of Alaska operates the ferry system. We've been involved in a dispute in Southeastern over the last 3 months over the pricing of the ferry system and the lack of space. We've asked that they raise our rates on the ferry and at least balance them out for a round trip fare. The purpose is to reduce some of the demand and keep only the higher revenue, express type cargo on the ferry and force the lower revenue and the freight that is not time sensitive to move via the barge service. We do operate a barge in Southeastern, as well. We have been unable to convince the State that they should do that. Let me use some numbers to help illustrate the problem. Normally in Alaska the heavy fare is on the northbound service, because we have so little backhaul. For an example, Tote or Sea-Land to Alaska pay $2,000 for a trip northbound on a full trailerload of freight. Southbound, they move their empty trailers for free. The ferry system charges, for example, in Southeastern, $1,000 northbound and $1,000 southbound. What the smart users are doing is putting those empty trailers on their own barges southbound, so

that the State is now getting $1,000 for the round trip on their vessels, costing them $1,000 in wasted revenue that should be on the ferries. We've been able to get absolutely no satisfaction out of the State to get that situation corrected. That type of thinking on the State's part is why we're so fearful.

Senator MURKOWSKI. Well, it would appear that the State is probably in the dilemma of determining whether there should be a subsidy favoring the higher revenue cargo operators, such as yourselves, or the tourists who also enjoy the utilization of a certain amount of deck space on the ferry. I think that this is something that the Federal Government is not going to get into in this legislation. I think that those recommendations are going to have to be resolved in a manner in which the State government reflects on whatever operational authority is established for the railroad. We're assuming, of course, that this is going to become a reality. I certainly wish the legislature well as they deliberate on problems such as yours and that of other competitors who have expressed similar testimony to yours. It's certainly welcomed by the committee. I think it will be reviewed not only by the staff but more particularly by the State authority that is being generated through the efforts of Commissioner Ward. It's been, quite enlightening to have somone who has to compete in the private sector, who has pay the going rates associated with the costs of borrowing money, and who has to face the realities of doing business in the private sector. I can appreciate all of this. Thank you very much.

Mr. JANSEN. Thank you, Senator.

Senator MURKOWSKI. Our next witness is Dr. Jim Drew of the University of Alaska School of Agriculture. As always, we welcome the testimony of the University of Alaska, and we look forward to your testimony as head of the department of agriculture. Dr. Drew, you may proceed.

**STATEMENT OF DR. JAMES V. DREW, DIRECTOR, AGRICULTURAL EXPERIMENT STATION, UNIVERSITY OF ALASKA, FAIRBANKS, ALASKA**

Dr. DREW. Thank you very much, Senator. I'm very pleased to be able to be here today and I would like to testify specifically in favor of S. 1500. The Alaska Railroad is essential to maintain and insure continued economic activity for the benefit of Alaskans. Current and future natural resource developments in Alaska including agriculture, forestry, mining, and petrochemical manufacturing require an adequate, low-cost transportation system. Products produced in interior Alaska must have ready access to markets through coastal ports, and supplies needed for production must move readily to interior Alaska. Moreover, coastal ports benefit economically from products produced or supplies needed in interior Alaska when low-cost land transportation is available.

The Alaska Railroad can provide an important part of this transportation system. It is particularly important that the State of Alaska acquire the Alaska Railroad in view of the intent of the Federal Government to give up ownership of the railroad. I would like to emphasize the need for the Alaska Railroad in Alaska's current plans for agricultural development. The economic viability of agriculture in interior Alaska depends on our ability to market

agricultural commodities competitively. Agricultural areas in other parts of the United States and Canada already have effective railroad systems for transporting bulk freight. Interior Alaska must have a railroad system operated in a manner consistent with other inland areas if products produced in Alaska are to compete with those produced elsewhere. The State is in a position to encourage this operation in a manner consistent with its need for a strong and diversified economic base.

Effective and relatively low-cost railroad transportation is essential to link agricultural areas of Alaska with outside markets and encourage development of the many services and interdependent components of a self-sustaining agricultural industry. Current plans of the State of Alaska involve bringing 500,000 acres of new lands into production by 1990, and 1 million acres by the year 2000.

Much of the State-owned land available for this expansion is within the valleys of the Tanana and Susitna Rivers in areas served by the Alaska Railroad. With increased tonnage of bulk commodities and supplies, the Alaska Railroad will be the least expensive means of ground transportation available. The Delta agricultural project of 60,000 acres is now underway about 100 miles southeast of Fairbanks and about 80 miles from the current railhead. Plans are underway to expand the Delta agricultural project by 70,000 acres in early 1982.

Extension of the railroad to Delta is currently under discussion in the State legislature as a step in connecting the Alaska Railroad with the North American railroad system. Plans are underway to initiate a second major agricultural project near Nenana in 1982. The Nenana agricultural project will eventually include as much as 300,000 acres of land in agricultural production. A 15,000-acre agricultural project near Point MacKenzie in the Susitna Valley is planned, and additional potential agricultural land is available in this area. The proximity of the Nenana agricultural project and the Point MacKenzie agricultural project to the Alaska Railroad enhances the viability of these projects.

Plans are also underway to construct transfer facilities near North Pole and near Nenana to permit the transfer of grain, fertilizer, and other bulk agricultural commodities and supplies from trucks to railcars and from railcars to trucks. The State of Alaska is currently purchasing 20 railroad hopper cars to transport agricultural commodities and other bulk materials. In addition, a port terminal elevator is under construction on the Alaska Railroad at Seward to receive grain for ocean shipment to other areas of Alaska and for export.

In summary, the Alaska Railroad is an essential ground transportation system for agricultural development in Alaska. Historians have pointed out that the absence of railroad development in the Eastern United States would have restricted agriculture to the valleys of the Ohio and Mississippi Rivers where water transportation was available. Thus, vast areas that now produce needed food and fiber in the United States would have been foreclosed for agricultural production.

In Alaska, transportation of bulk materials from a variety of natural resource industries, including agriculture, requires a strong Alaska Railroad positively oriented toward the needs of

Alaska. Transfer of the Alaska Railroad to the State of Alaska will be a first step toward meeting this need.

Senator, I'd like to also add four publications from the Cooperative Extension Service of the University of Alaska which explain the agricultural development projects which I have mentioned and indicate to some extent the acreages that will be involved and the ultimate requirements for ground transportation.

Senator MURKOWSKI. Thank you very much, Dr. Drew. Can you give us an indication of what the plan is for the shipment of grain this year? I understand there's likely to be a very substantial harvest.

Dr. DREW. That's correct. It looks at the moment that there will be sufficient storage for the harvest at Delta to use grain produced this year to meet in-State needs for this coming year. There was not as much planting this spring as there would have been if an export transportation system had been available for this harvest season. Since it was evident that it was not going to be available, there were fewer farmers planting than would have planted otherwise.

Senator MURKOWSKI. Do you have a feeling for the attitude of the farmers in the Delta area where most of the grain is presently grown? It's important to consider the fact that if the Railroad were extended some 80 miles from Eielson down to Delta, it would be questionable whether the traffic initially would offset the costs of that extension. I'm talking about the traffic that would be generated from moving the grains, moving the fertilizer, and whatever other incidental traffic there might be. As a consequence, somebody would have to pay for it, because it couldn't pay for itself. The Federal Government has indicated a reluctance to expand the Railroad, and we're talking about the State taking it over. The question is whether it is in the best interest of the State to, in effect, subsidize an extension.

Dr. DREW. I'm sure that most of the farmers in the Delta area, in their own best interest, would prefer to see the Railroad extended there, because it could eliminate one of the transfer points with respect to moving from truck to rail transportation, and therefore decrease transportation costs to the port areas. But I think the farmers in the Delta area also recognize that agricultural production alone in that area cannot support the extension of the Railroad. But I think they feel that there are other resource activities that may be developed within that portion of Alaska that may ultimately provide the kinds of bulk commodities and quantities of those commodities for transfer on the Railroad that would make the rail extension economically feasible.

Senator MURKOWSKI. It would certainly be feasible if the Railroad were, for other reasons, connected to the transcontinental system, and it could simply pick up the grains and drop off the fertilizers and whatever.

Dr. DREW. I think in the Lower 48 the construction of railroads was probably something less than economically feasible at the time the railroad construction was undertaken, but there was a substantial amount of activity at the time of railroad construction to develop the related economic activities along the rail routes, so that once the railroad was in place and in operation for a certain

period of time, the tonnage carried made them feasible for a whole array of natural resource developments.

Senator MURKOWSKI. This brings us back, of course, to the question of subsidies and fair competition. I assume that it's not profitable to truck grain to market, and where the market may be would be a transshipment point, either Anchorage or Seward. At that point our grain is no longer competitive with grains that can be obtained from other sources. So for the record, it appears that we still have a dilemma where if we develop Alaska's resources, we're going to have to decide whether or not we want to subsidize the extension of rail service. Obviously, there's a highway to Delta and there's a highway to Anchorage and Seward.

Dr. DREW. Yes, Senator, I believe that's correct. I think we also have to remember that there are many areas in the United States which produce grain in an economically viable manner where transportation distances are on the order of 300 to 400 miles from where the grain is produced to a tidewater area or to a river area. In general, trucking is more expensive than rail transportation for grain products, although there are areas in the United States now where, because of deteriorating rail conditions or other considerations, grain is being hauled substantial distances by truck. The general rule of thumb in the grain trade is that it cost the same amount to haul a given quantity of grain 5,000 miles by water as it does 500 miles by rail as it does 50 miles by truck. And so with these figures in mind, it becomes evident that unless there are overwhelming considerations from another standpoint, that the rail transportation has a major advantage for inland areas.

Senator MURKOWSKI. We very much appreciate your testimony, Dr. Drew. I think the fact is Alaska's agriculture potential is one that we need to be constantly reminded of, and I do thank you.

Dr. DREW. Thank you.

Senator MURKOWSKI. Out next witness is Mr. Bob Johnson of the Teamsters. Bob, I welcome you to the committee. I'm sorry that Senator Stevens can't be with us today; he sends his apologies.

## STATEMENT OF ROBERT W. JOHNSON

Mr. JOHNSON. Thank you, Senator. I am Robert W. Johnson, a teamster and resident of Anchorage, appearing today as the representative of 13,500 teamsters in local 959, the local union having jurisdiction over the State of Alaska. We have about 700 members who actively compete with the railroad each and every day. We have another 300 who are dependent upon the Railroad to a greater or lesser degree. Those in the Usibelli Coal Co., for example, are very dependent upon the railroad. It's the only means of getting the coal out. Others, in warehouses, supply firms, have a lesser dependency, but still it would be fair to say that there is no member of the Teamsters that would not be affected by any change in the fortunes of the Alaska Railroad, because they are all Alaskans.

This railroad is one-third of James Wickersham's legacy, his most prominent legacy to the people of Alaska. It ranks along with the University of Alaska and with statehood which came about because he got Territorial status which progressed to statehood. It was Wickersham's hope and his purpose that this Railroad would

be the catalyst for the development of interior Alaska. He foresaw a time when all the resources, the minerals, agricultural products could be developed. He went far beyond anyone else's dreams that I've ever read. He would have this railroad probably collecting oranges from Point Barrow if he'd thought there was any chance to have a greenhouse up there. But basically, Wickersham's dreams never came true, and the same fate has generally been rendered to most of the short-term aims foisted on the railroad by the assortment of managers over the years.

They were frustrated, first of all, by being in a competitive status with those who far outranked them in clout down in the Federal Government. In 60 years we've added less than 100 miles onto that railroad, and rights-of-way would have given it more mines, would have given it more mineral to haul.

It probably could have connected up with the Canadian Railroad by now, and would have been an excellent saving of 2,300 miles for Japan in offloading her products and taking back materials. It had prospects, but unfortunately they always competed with somebody that had a better voice, a louder voice, and could be heard better than we could up here. And so it stagnated, and as a result it became kind of kinky in its operation.

There were Fairbanksans here that once went to jail because they wouldn't go for some of this. The story is old here, but new to many people: The dual set of rates. Every year in winter, they had one set, and every year in summer, they had another. The tariffs changed, of course, because competition changed, and in the summer, when the truckers could haul out of Valdez, the rates went down. And in case they didn't hit it right with their tariff and the truckers were lower, they used the ferry over the Tanana River to equalize things. Whatever the difference was in the truckers' favor, that was the rate for the ferry. And then finally, it got to the point where they didn't want to break even anymore and didn't want to match with them. They wanted to beat them. So they made the ferry so high that they were a sure winner. And that was a little too far, and they had to send the deputy marshal to keep order, and they put him in the privy for several days and rode the ferry for free. Then they had a big lawsuit, and the marshall suddenly didn't see anyone and didn't recognize a soul and had no idea who put him there. And it all came out in true Alaskan style, because Alaskans will follow the law as long as it's going where they are, and only that far and only in that direction. But basically, the Railroad resorted to these things, and with each deal, they didn't really gain. They really lost. There is no question about that.

It's not the fault of those working for the railroad. It is the nature of the beast created, whenever government tries to go into business, they it comes up with all the worst characteristics of both government and business and with none of the good. It fosters it, it provides a soil where it just naturally develops, and the railroad is no exception to that.

Now over the years, our teamsters have watched work which could have been theirs, being performed by a government subsidized, and actually government created and government sponsored, competitor, and they have been forced to suffer it. And we've seen the employers that we work for quite often unable to compete

against the railroad, and our jobs went down the tube and we watched that, too. And we've entered all our bargaining sessions with the knowledge that should we bring the final moment around and have to strike, that along those rails are the finest set of strikebreakers in Alaska who are forbidden by law to support us or to help us in any way. And it is an entity that is a little bit desperate and quite a bit out of step with the rest of the world that we live in day to day.

Now it's proposed to transfer this railroad to the State of Alaska from its Federal status. This is something akin to inviting a lion to dinner in your home. You do it with a prayer, a prayer that you won't wind up on his menu. And we need the railroad; there is no question about that. Its ability to haul bulk goods and everything is unrivaled. When they spoke of that, about the 5,550, what they didn't say is "in large amounts." That's where the railroad excels, absolutely excels. And we need it for the future, need it very, very much. But there's some things that we'd like to see if this transfer is to be made.

First of all, we'd like to know exactly what obligation the State would have for the pensions of the workers. That Multiple Employer Pension Act has made us very spooky, very, very spooky. That looked so innocent when it trotted out there and was adopted, and it has turned out to be an iceberg, complete with TNT at every corner. What sum is involved for the State in picking up the liability for pensions?

Second, what has the subsidy been year by year for the past 25 years? Now we know they made money during the pipeline with the Railroad. We understand that. We understand they made money in World War II. But generally, what was the subsidy year by year, not the average. We want to know, because we know what those years were. We know when White Alice was on, when the DEW line was on, when all the rest of the building was going, and we'd like to know what it is. We want to know what cooperation the State may expect regarding future rights-of-way across Federal lands, and we want a firm, irrevocable, unalterable commitment by the Federal Government to give that cooperation. We have hung up in too many committee rooms in Washington, D.C., with things that were absolutely vital to us. Too often have we heard, "We don't have that in South Paduka and we don't have it in Okefenokee and we don't have it here, so why should we put it in Alaska, or why should we do it for Alaska?" We would prefer, as teamsters, that the State pay a token sum, say $1 million, for the railroad and gain an outright bill of sale from the Federal Government. We neither want nor can afford anymore string bets, like the Statehood Act, to be amendmed at leisure by future Congresses whenever the will shall strike them of by future administrations in the Udall "edict" manner.

We want a clean deal that belongs to us. You've got no cotten picking fingers in it anymore. And we think that's fair. You want us to take the liability, if we're going to have to handle the manure around the roses, let us smell the blooms and have control of the flowers. It's a fair deal.

Now we understand that a lot of their ills have been solved. We read the Daily News last Saturday and we learned that they're in

the black. They laid off 100 people, roughly, and got 10 flatcars to haul piggyback. Presto, they're in the black. I wonder if they'd laid off 200 and got 20 flatcars, if they'd have been twice as far ahead? Maybe this is something that should be pursued. But the timing was remarkable, absolutely remarkable, and as a PR man, I congratulate somebody.

Basically, and in the summing up, Teamsters regard the railroad in much the same manner as a dog would judge a cat show. We don't really believe the thing should exist in its present form, and that hampers our thinking in other matters. We particularly take objection to the following: The use of taxes paid by Teamsters, among others, to subsidize the railroad in competition with Teamster employers. The failure of the railroad to maintain its operations in true business fashion, the failure to pay taxes, and including but not limited to the inability of the employees to bargain collectively. The subsidized competition, an ever present threat to those employers who employ our members. In fact, we suspect right now that if we could get at the figures, we'd find out that the Hydrotrain was getting its full tariff for the haul and the railroad here was shaving it to make that nice package deal that's bringing and resulted in this so-called thing. But that's another thing we've never been able to get nationally, is the figures, neither we nor anybody else. And finally, the benign neglect which has marked the Federal guidance of the railroad's affairs, to say nothing of their entire stewardship, so far as Alaska is concerned. now, carried through under the proper conditions, this transfer would offer the opportunity to get the problems where we can work on them year-round. In short, it gives us the opportunity to have more input, and besides that, would remove the railroad workers from the ranks of those forbidden by law against striking. They're not connected with public safety, and under our State law, that's the only group that can't strike. So we would at least have that much. And in view of this, it could be good for labor, but then, Wickersham meant well, too, so there are no guarantees. So gentlemen, basically, if it comes down to the State taking the railroad or it closing down, we need that railroad, we have to have it, and we admit that; somewhat reluctantly, but we do.

Senator MURKOWSKI. I very much appreciate your testimony, Mr. Johnson. I think, from some of the comments this morning that you may have missed, it only fair to tell you that it's my understanding that the Federal Government in its infinite wisdom is prepared to convey the railroad over under the quitclaim deed concept, which means conveyance of all "right and title" that they may have to assets or liabilities. But in any event, I think that the responsiveness of not only the Teamsters but all the people of Alaska to the railroad as we would envision it under State ownership is very much related to the relationship which the people have to those that they elect in Juneau and the responsibility of those elected officials to their constituency. So be that as it may, it would be my hope that whatever group is structured for the ultimate operation of the railroad, that they can learn by some of our earlier experiments in transportation. The ferry system is a good example of some good things and some bad things that have been

done. We'll see what kind of a railroad Alaskans are able to build here with their wealth of knowledge.

Mr. JOHNSON. It's a funny thing. I, once upon a time, joined a group that was going to put the railroad out of business. At the time, I didn't have a lot of belief in eternal life, but I'll tell you, when you start putting the bureau out of business, you get a lot of faith in eternal life.

Senator MURKOWSKI. Well, I'll tell you, as I indicated earlier, the situation surrounding the Federal Government's experiement in the railroad business of Conrail has left them with a poor taste in their mouth and they want to get out. That's why the Alaska Railroad is moving on the same time schedule.

Mr. JOHNSON. Well, let us hope.

Senator MURKOWSKI. Let us hope for vision and wisdom within our State legislature.

Senator MURKOWSKI. Moving right along, our last witness is Mr. Tony Zybach. It's a pleasure to have you with us, and we welcome your testimony. You may proceed.

## STATEMENT OF TONEY ZYBACH, FREIGHT HANDLER, ALASKA RAILROAD

Mr. ZYBACH. Thank you, Senator Murkowski. Senators Stevens and Murkowski, Congressman Young, members of the respective Senate and House committees, I am Tony Zybach, freight handler for the Alaska Railroad. I have the honor of appearing before you today as the spokesman for the Fairbanks area employees. The employees of the Alaska Railroad for obvious reasons have been closely following the proposed transfer of the railroad to the State. Upon reviewing the current draft of S. 1500, we as individuals discovered many areas that could become sources of consternation due to the general nature of the wording. Upon casual discussion we became aware that as fellow workers we shared the same fears and decided to take more formal and organized steps to bring our concerns to your attention. Consequently, we have met several times and have reached consensus on certain issues that we feel must in all fairness be addressed by S. 1500

Although, we heartily endorse the proposal, transferring the Alaska Railroad from the Federal Government to the State of Alaska, we feel that the current provisions made in S. 1500 have not addressed the issues in a manner that railroad employees feel comfortable with. We are addressing specifically the mandates outlined in section 3 paragraph (a) of S. 1500. The spirit of this section seems to be to insure current employees certain positive options in the event of the transfer. However, the actual wording leaves many questions unanswered. First of all, we are concerned that the railroad continue to operate and perform the vital service it has in the past.

The roll of experienced railroad workers in helping achieve this goal cannot be overemphasized. However S. 1500 only allows a 1-year transition period at which time the fate of experienced workers hangs in the balance. We would like to question this for two reasons. First of all, 1 year is hardly enough time to train new employees to the complexities of running a railroad. And second, it does not even come close to being an equitable period of time for

people who have spent the best part of their working lives under railroad employ.

We therefore would like to see the period of time extended from 1 year, as it currently reads, to 5 years.

There are many more subtle issues that have come to our attention but rather than outline them we find that an excellent solution has already been presented by our union, AFGE Local No. 183, at the public hearings in Anchorage on August 10. We want to go on record as being in full support of the proposed changes in S. 1500 as presented by them. Besides the issues already brought forth earlier in this testimony we concur with yesterday's testimony and its concerns about our jobs, our retirement, rate of pay after transfer and other benefits we now have as Federal employees. Beyond an extended term of employment after transfer, we would also like to see a clause giving employees severance pay if they are terminated by the State after transfer has taken place.

These items have already been more than adequately outlined in the testimony given by AFGE Local No. 183 yesterday in Anchorage. Further, they were enthusiastically received and accepted in a meeting of Fairbanks Railroad employees as well as union representatives from other local government agencies. The underlying message of this overwhelming consensus is that all the Alaska Railroad employees are united regarding this very important transfer issue.

Your past record in service to us as citizens of the State of Alaska and as Federal employees has proven your commitment to our well being. For this reason we have no reason to believe you would alter your sensitivity to our concerns at this time. We, therefore, will be following the progress of this bill and looking for those changes which we have discussed in this testimony. This is the conclusion of our formal testimony and on behalf of the Alaska Railroad employees I would like to thank you for your time. At this time we will attempt to answer any questions you may wish to ask.

Senator MURKOWSKI. Your representation is of the baggage handlers?

Mr. ZYBACH. I'm not a union member. I am representing the Fairbanks area employees, and not a union. Members of all the different unions got together, and we've been meeting and discussing this for the last couple of weeks.

Senator MURKOWSKI. You're the spokesman then, for the railroad employees that reside in Fairbanks?

Mr. ZYBACH. That is correct.

Senator MURKOWSKI. And how long has your tenure been with the railroad?

Mr. ZYBACH. Five years.

Senator MURKOWSKI. You're employed in what capacity?

Mr. ZYBACH. I am a baggage handler, freight handler, and baggage checker.

Senator MURKOWSKI. And you're employed year-round?

Mr. ZYBACH. No, I'm a temporary employee.

Senator MURKOWSKI. But you've been employed 5 years?

Mr. ZYBACH. Yes, since 1977.

Senator MURKOWSKI. All temporary?

Mr. ZYBACH. Yes.

Senator MURKOWSKI. So when there's a slack period, you're laid off, and then you come back the next year?

Mr. ZYBACH. Exactly.

Senator MURKOWSKI. Thank you, Mr. Zybach. We appreciate your testimony and that of the Fairbanks resident Alaska Railroad employees.

Mr. ZYBACH. Thank you.

Senator MURKOWSKI. Our next witness is Mr. Joe Jackovich. You have our attention, sir.

## STATEMENT OF JOSEPH M. JACKOVICH

Mr. JACKOVICH. My name is Joseph M. Jackovich and I'm a leasee from Alaska Railroad and have been a leasee since 1969 in Fairbanks. I've been a leasee in Anchorage for the last 5 years. This probably hasn't had a lot to do with the transfer of the railroad to the State. But it is a matter of concern; I gave testimony on the subject in 1978 on December the 13th to the Federal people in the library at Wien, Alaska.

Senator MURKOWSKI. Why don't you summarize for us your testimony, and we'll take your whole written testimony and put it in the record.

Mr. JACKOVICH. That would be fine.

Senator MURKOWSKI. We'd appreciate that.

Mr. JACKOVICH. I think all you really need is this letter.

Senator MURKOWSKI. Well, why don't you summarize it for us, Mr. Jackovich.

Mr. JACKOVICH. Well, it has to do with leases on Alaska Railroad property. I have property in Anchorage that I lease from the railroad. It started at about $1,425 a year. That was very cheap, and that's the reason I entered into the lease arrangement. Every year, it seems to me, there has been an increase in the rate. The railroad gives you a 2-year extension and then raises it again. Senator Stevens has been very much aware of this, and in fact helped us alot. When I started the ground was just a bare piece of ground. I spent probably about $300,000 to make it feasible to even put a building on it, and I put about $450,000 into a building. But yet the rent just seems to keep climbing and climbing and climbing. Now, in 1982, I'll have another increase in the lease. Maybe I should run down how it started. In 1976, I paid $1,465 a year. On September 1 1977, I paid $3,226 per year. September the 1st of 1978 I paid $4,987 a year. September 1st of 1979 I paid $6,748. We did get a reimbursement because of legislation introduced by Senator Stevens. The reimbursement was $1,300. So the actual figure there is 4,800- some dollars. In September 1st of 1982, they raised me to $12,810 a year. I pay to the city of Anchorage $5,900 in inventory property tax. Sewer assessments run about $5,000 a lot, and I have two lots. I have five lots in Fairbanks. They're $5,000 a piece. I don't know if this is ever going to stop. I can't seem to amortize my bucks investing in the railroad industrial area, for some reason or another. If this is going to keep on going, even if the State does take it over, I would just as well get out of it, the sooner the better. But when I have a $1 million investment in the railroad industrial area, I've got to have some protection. I can't amortize my dollars because now I'm within about $2,000 a month and 50 cents a

square foot I'm paying for the land. I don't know what will happen if the State takes it over. I definitely would want the State to take it over. I think the railroad is an artery of Alaska. It is like a river. Like the Yukon River is to all the rest of Alaska, the railroad is the same thing to Fairbanks. The original idea of the railroad was to service the military, back in 1941 when the war broke out. The intent of the builders of the Alaska Railroad was to open up interior Alaska and supply the military establishment. I don't see that this aim has been changed. The Alaska Railroad should not become a real estate developer who's interested in any rent rate competition will bear. The Alaska Railroad's aim should be to help in the development of the interior by keeping costs of freight down to the consumer, both civilian and military. Your renters are performing this function. I want to put this thing on the record.

Senator MURKOWSKI. We appreciate the submission of your letter for the record. Obviously, Mr. Jackovich, if the railroad is transferred to the State, the problems that you have indicated to us will become problems between yourself and the State of Alaska. I'm sure Representative Bettisworth back there is well-aware of that. I have no further words of wisdom.

Mr. JACKOVICH. Thank you, Senator.

[The letter follows:]

JACKOVICH TRACTOR & EQUIPMENT CO., INC.,
*Fairbanks, Alaska, August 5, 1981.*

Mr. MERLE W. AKERS,
*Real Estate Officer, The Alaska Railroad,*
*Anchorage, Alaska.*

DEAR MR. AKERS: Your letter of December 13, 1978, has been received and I would like to comment on it.

The letter and the action of the Department of Transportation conclude that present rental rates are lower than some rental rates in the Fairbanks area but I wonder if the comparison is really correct. Local rental rates for similar industrial lands are artificially high because of an abnormal demand due to the building of the pipeline and the anticipated gas pipeline. Given another year, land appraisals will drop due to the reduced demand and the overbuilding of warehose complexes on cheap marginal land now considered extremely valuable. Probably the ARR rental rates are more correct than the rental rates for comparable Alaskan lands and a natural reduction in the value of industrial property will come about.

An appraisal by the ARR of the tonnage now being delivered to the North Star Warehouse Complex, the trackage beyond Lakeview, and the private industrial properties in Aurora will show that the tonnage moving into these areas by rail does not support the high property values assessed to these areas by their owners. I believe a survey will show that although they are comparing local industrial land with ARR rental properties they are not like properties. Private industrial properties are now highly overvalued because of demand and anticipated optimistic demand, better termed speculation. These private industrial sites have no friendly feeling for the ARR or its success or failure. In fact, they may be inclined to see the ARR as an enemy while I look at the ARR as the major stabilizing influence in competitive transportation rates and services. I think the ARR does not have to be a follower because it is the leader and has always held this position in Interior Alaska.

The new industrial areas were built and the property acquired at a period when Fairbanks real estate and construction costs were at their most inflated level and when transient renters were willing or forced to pay what property square footage costs currently were. New warehouse builders paid extremely high prices for formerly low-priced land, high material costs, high debt service and labor productivity was down while wages were up. My point is that you may not be low on your rental rates but the base figures that are influencing the suggested rental rates are artificially high.

Keeping the present ARR rental rates will allow existing and future businesses that supply the basic commodities for the Fairbanks community to maintain their present precarious but profitable position. When making your judgment keep in

mind that business competition is not just local but the major competition in the wholesale class is from Seattle, Portland, and Los Angeles. Fairbanks wholesalers must be able to match their overhead with the overhead of similar businesses drop shipping into this area. Wholesaling is very marginal in the best of times and reasonable ARR property rates have permitted the wholesale sector to grow and survive. I think the founders of the ARR industrial land concept knew this and encouraged the growth of rentals by providing low rental fees.

The intent of the builders of the ARR was to open up Interior Alaska and supply the military establishment. I don't see that this aim has been changed. The ARR should not become a real estate developer who is interested in any rent rate competition will bear. The ARR's aim should be to help the development of the Interior by keeping costs of freight down to the consumer both civilian and military. Your renters perform this function.

An important point that I believe is overlooked or not given its due is the fact that leased land is not as valuable as purchased property. No bank is comfortable with investing in capital expansion on leased land with an open ended escalation clause. If the ARR policy is to lease, they must make their leases very attractive by being well below market and long term rental rates not subject to major escalation over the term of the lease. A lease that requires a high rental will force the leasor to develop the lease property in order to obtain enough return on his lease to make it profitable. The resulting buildings and other improvements must conform to state and city codes, necessitating very expensive construction with no ownership of the property or real control of the improvements.

If the Secretary of Transportation wants to bring ARR rental rates up equal to average Fairbanks property values then the rates would be much too high because ARR property is physically equal but basically unequal. It is unequal because the lease arrangement must allow margin to scrap the building and improvements at the time the lease expires. The only fair way to raise the lease using local rental rates for comparison would be to have a clause written into the lease that the ARR would purchase all capital improvements at fair market value when the lease expires. A clause of this type would allow a ARR lease holder to build decent capital improvements knowing the value of their improvements are recoverable. The alternative is rental rates set very low to encourage capital investment that can be amortized over the term of the lease. The total of the lease plus the capital improvements divided by the length of the lease can then be compared against other local rental rates to arrive at fair rental value, keeping in mind that ARR property renters have no lease purchase right.

A high annual rental with a purchase option would provide a ARR leasor equal rental rates and give them the right to ownership that most agreements provide when the property is developed as opposed to used bare ground.

Another value that leaseholders pay for that is not shown in the lease expense is the development of their business location and the ARR rental property as a whole as a business center. Businesses increase the value of the ARR property by advertising, word of mouth or property development. This expense should be added to the present lease cost to help determine the real cost of the lease.

I think that another factor that is very important is that the ARR and its leaseholders are both trying to sell freight. We are trying to support the ARR with all our freight both directly and indirectly through TOTE or Sea-land or other piggy-back cargo carriers and we are deserving of favorable consideration of all the factors invoved. We are working for your success and a successful railroad will allow it to fulfill its intended function, to develop the interior of Alaska and support the military establishment just as we all have been doing.

Very Sincerely yours,

JOSEPH M. JACKOVICH, *President.*

Senator MURKOWSKI. Is there anyone else that wishes to testify? If there are no further witnesses wishing to testify, on behalf of Senator Stevens, Don Young and myself, we thank you for your presentations. I think that the submission of material here was most germane to the opportunity at hand. I consider the disposal by the Federal Government of the Alaska Railroad to the State of Alaska as an opportunity for the State rather than a problem for the State. I think many of you envision a more development oriented-railroad that can be more responsive, because of its ties to the elected representatives in Juneau rather than the Federal Government. I certainly commend Senator Stevens for his commitment to

move this legislation through in what I consider to be a very short time period. I have been pleased to have been of assistance in this regard. I think it's a foregone conclusion the Federal Government is going to resolve itself of its responsibility for operating the Alaska Railroad. Hopefully, those concerns that have been expressed in the hearings in both Anchorage and Fairbanks can be resolved in the review, and those that cannot be are going to have to be resolved, in my opinion, through the State of Alaska and the appropriate elected legislative representatives. With that, I would advise you one more time that the hearing record will remain open for a 30-day period. Again we wish to thank you for your attendance. The hearing is adjourned.

[Whereupon the hearing was adjourned.]

# ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

## Statement of Knappton Corp.

Mr. Chairman, ladies and gentlemen, my name is Robert J. Hasler, and I am Vice President, Marketing, for Knappton Corporation, Portland, Oregon.

Knappton Corporation is in the marine transportation business specializing in tug and barge movements in the Pacific Northwest and Alaska.

Our company provided the first railcar/barge interchange over 19 years ago, from Prince Rupert, British Columbia, to Whittier, Alaska. The rail cars are interchanged with the Alaska Railroad for distribution of goods to consumers throughout Alaska. These rail cars transport products from most of the lower 48 states to Alaska.

We are aware of the intensive effort being put forth by two ocean carriers to introduce regressive, restrictive legislation into your bill which would allow these ocean carriers to assist in the rate-making policies of the Alaska Railroad and the rail barge carriers. The result of their proposed restrictive and regressive language would be devastating to the shippers and consumers in Alaska.

The Alaska Railroad is a vital artery for the movement of cargoes to and from Alaska. The development of the State will occur in an orderly, economic, and prudent manner only if the Alaska Railroad is allowed to avail itself of all opportunities for freight movements and interchange. While the service of ocean carriers who are attempting to gain control of the transportation to and from the State are also important to the welfare of Alaska, they have not proven themselves to be worthy of a monopoly status for the movement of all goods into, out of, or within the State. All modes of transportation are vital to the welfare of the people of Alaska and each should be governed by the free enterprise system and the wisdom of its management.

The rail/barge mode offers a competitive alternative which has proven its viability with consistent growth and reliability over a period of 19 years. All studies of these movements indicate that they are operated at compensatory rates by the parties involved.

The issue that must be addressed is that each system of transportation has certain advantages and disadvantages. When one mode of transportation attempts to restrict the normal free enterprise movement of commodities by regressive legislation that will affect other modes, it is the shipping public and consumers who suffer.

Knappton Corporation presently operates two rail car barges between Prince Rupert, B.C., and Whittier, Alaska. We are in the process of increasing this capacity in order to meet the existing and future demand for rail cars to and from Alaska. We believe this movement is economically sound and will continue to make an important and viable contribution to the development of the State.

Therefore, we urge this Committee to consider carefully the restrictive language proposed by these ocean carriers and what the adverse effects would be to the people of the State of Alaska.

Thank you for the opportunity to appear before this Committee, and we would be pleased to discuss this matter in more detail with you or members of your staff.

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## Statement of the Sierra Club

The Sierra Club supports the continued operation of the Alaska Railroad. Because the federal government has indicated its intent to phase out federal funding of the railroad, we would, subject to the changes discussed below, endorse proposed legislation such as S. 1500 which would transfer the railroad to the State of Alaska.

Not all of the Railroad's lands and property should be given to the state. All lands and improved property within the boundary of Denali National Park should be added to the park by Congress. At the same time, Congress should grant the state the use of the improved property within the park, and a right-of-way across the park, subject to such laws and regulations as the Secretary of the Interior shall determine. A right-of-way of 100 feet on either side of the track seems adequate,

except in the case of the "Y" track to the power station in the McKinley Station area. We agree with the provision in S. 1500 for a right-of-way of eight feet on either side of the "Y" track.

There is a precedent for railroad rights-of-way across national parks. In Glacier and Grand Canyon National Parks, the railroad operates on a right-of-way granted by the federal government. This arrangement has proven satisfactory to the railroads and the National Park Service.

Sections 6(b), 7(b), and 9 should be deleted in favor of a new section adding the railroad lands and property within Denali National Park to the park, subject to laws and regulations as the Secretary determines.

With respect to railroad lands and property outside Denali National Park, Sec. 7(a) provides that if the state makes adverse use of the lands or property within 10 years of the transfer, then the lands and property revert to federal ownership or the Secretary of Transportation recovers the dollar value of the lands or property. We recommend that Sec. 7(a) be amended to require the State to use its lands for railroad purposes only. In the event the state abandons any or all of the line, then lands or property over the portion abandoned shall revert to the federal government for permanent retention in public ownership. This will ensure that the right-of-way lands remain in public ownership, and potential resumption of service would not be complicated or even prevented by a loss of the right-of-way lands. There is no need to risk repeating the sad experience with abandoned right-of-way in the other states.

All lands outside Denali National Park conveyed to the state should be charged against the state's entitlement under the Alaska Statehood Act. As introduced, S. 1500 fails to charge the state for whatever acreage is ultimately conveyed. If through abandonment of the railroad certain state lands revert to federal ownership, then the state's entitlement should be increased correspondingly.

Thank you for the opportunity to submit testimony on this matter of both state and national interest.

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### Statement of the National Audubon Society

Dear Mr. Chairman, my name is David R. Cline, and I am testifying today on behalf of the National Audubon Society and its more than 2000 members in Alaska.

We are pleased to support proposed transfer of the Alaska Railroad to the State of Alaska for responsible and cost effective management. We are greatly concerned, however, with future management of railroad right-of-way lands along about 50 miles of the eastern boundary of Denali National Park, and at the park station entrance and headquarters/hotel complex. Should incompatible land uses such as commercial development or land disposal ever be allowed to occur along this corridor, park values could be seriously and unnecessarily compromised.

Our members recognize Denali National Park as one of the state's and nation's great natural wonders. Also the fact that tourism continues to be one of Alaska's three chief sources of income with Denali being a favored destination by most visitors to our state.

To best protect the integrity of Denali National Park's eastern boundary, we strongly recommend that all railroad property within existing park boundaries be transferred from the Department of Transportation to the National Park Service. Issuance of a statutory right-of-way to the State of Alaska for railroad purposes only could then be included in the enabling legislation.

There is ample precedent for such an arrangement, e.g., railroad right-of-way through Glacier and Grand Canyon National Parks in the Lower 48. To our knowledge, the railroads have continued to operate successfully in these parks without unnecessarily compromising park values, yet supportive of high quality park visitation.

Should the decision be made to transfer the right-of-way lands in question to the State, however, we believe it essential that restrictive convenants be included to assure that these lands will be used for railroad purposes only, and that all necessary environmental controls remain the responsibility of the National Park Service.

In such a case, we would also strongly support Senator Stevens' reverter clause whereby all railroad right-of-way lands within boundaries of the park would be transferred to the National Park Service at such time as they may no longer be needed for railroad purposes.

Mr. Chairman, we greatly appreciate your providing us opportunity to testify on this issue, and for considering our recommendations.

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STATEMENT OF JAMES A. SIMPSON, PRESIDENT, PENINSULA SHIPPERS ASSOCIATION

My name is James A. Simpson, President of Peninsula Shippers Association. The Association acts for its members in consolidating freight and dealing with the carriers. There are 250 members ranging from large shippers, such a ITT Continental, to small independently owned local grocery stores. For our members, we arrange transportation of approximately 130 trailers and containers a week. Our total freight bill is $17 million annually.

It is important to our members to have continued service by TOTE and Sea-Land. For our 250 members, these carriers have revolutionized our businesses. They have made it possible to get delivery of merchandise on a regularly scheduled basis. The service is dependable—we can count on it. The service is fast—3 days.

We depend on this service. We are businessmen and we know what it is like to compete in the marketplace. Any of us, if we had to compete with Government, would find it impossible to stay in business. We don't believe the carriers we use can be expected to compete with the Government either.

We are very concerned that if they must continue to compete with the Government, they will be forced out of business and we, the users, will find ourselves back where we were several years ago. We could be relying on a slow, unreliable, and very independent carrier which will have no competition. That scares us.

This potential problem ought to be taken care of by the Federal Government before the railroad is transferred to the State of Alaska. The solution is simple. There should be a prohibition against the State subsidizing the Alaska Railroad where it is competing with private companies.

The State should only subsidize the railroad for doing those things that private companies cannot do. There is plenty of that kind of work that needs doing without having the taxpayers of this State subsidizing competition against private companies.

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STATEMENT OF EDWARD G. BURTON

Mr. Chairman, members of the committee, Senator Murkowski, Representative Young: I appreciate your courtesy in holding these hearings in Anchorage and in holding the record open for a period of 30 days for the submission of additional testimony.

I practice law in Anchorage, Alaska, with the professional corporation of Burr, Pease and Kurtz, of which I am a shareholder. My firm represents a great variety of clients in a great variety of matters. My own practice is concentrated in real property, natural resources and public land law. We represent two Native Village Corporations, one (Eklutna) with extant selections involving the Alaska Railroad, and one with no such selections nor any designs on any. We represent a number of different banking, commercial and industrial clients who are lessees of the Railroad, or shippers on the Railroad, or landowners fronting on the Railroad, or financers of such activity, or some combination of the foregoing. We have been asked repeatedly to give our opinion on titles in Alaska, not only in connection with real property developments in "railbelt" Alaska, but also in connection with mineral, and oil and gas properties. We have assisted with the financing of natural resource development.

This statement, then, is from the perspective of one who has repeatedly been called up to research public land law issues with respect to the practicality and viability of long-term enterprises upon the land. I confess whatever prejudices or appearance of prejudices result from having represented Eklutna, Inc. with reference to such issues, including their selections of lands claimed by the Alaska Railroad. Let me turn to the substance of my comments.

The major point I wish to make is that Native selections are widely relied upon in this State as affording an equitable title free of the risk of loss, and that any legislation to the contrary may set a most dangerous precedent. Since we are dealing with a statutory right of selection, the precedent is not without import for the State of Alaska and other western states.

First, however, let me commend Senator Stevens for his attention to the blanket railroad easement contained within patents to lands in Alaka. This easement may serve the economy of railroad construction, but possible only when narrowly analyzed. In fact, this easement transfers the cost of the extension of the railroad from the railroad to the landowner, and to the same public which it is proposed will own the railroad. Let me explain what I mean.

Unlike the parallel easement statue respecting ditches and canals (43 U.S.C. § 945), the railroad statute (43 U.S.C. § 975d) contains not even a provision for payment of compensation for any improvements which lie in the path of construc-

tion. Potentially, this fact creates a major problem for the financing of improvements. In-State institutional lenders are aware that the easement exists, but apparently commonly extend loans despite the easement because exercise of the easement is, as a practical matter, not foreseeable. If this easement authority in the United States is transferred to the State in response to pressures from advocates of rail extension, one will no longer be able to opine that exercise of the easement is unforseen. The result will be to cloud the title of loan applicants misfortunate enough to have a project located between the present railroad and its possible destinations. The deadening effect upon that kind of economic activity which seeks sophisticated title guidance and employs credit from financial institutions unfamiliar with Alaska, can have "mega-effects" upon Alaska. Those whom such titles threaten immediately will be potential new major industrial employers. Should the "news" become common knowledge among title insurers, as it surely would, whole corridors within the State could become "redlined" for residential and commercial construciton. This scenario may be somewhat apocalyptic, to be sure, but Alaska has had similar experiences with title insurers discovering defects in law, as when the insurance regulators in Alaska forbade insuring against unrecorded liens.

New industrial activity in Alaska often being generally perceived as economically marginal by those who would start it up, one should not unnecessarily create what at best could be back-breaking straws, and at the worst be financial barriers. The construction lien title insurance problem brought residential construction to a halt until the Legislature acted. The Railroad be beyond the reach of a legislative prohibition on the exercise of the easement, by reason of Section 7, and a great mischief could result.

The principal problem with the claim of the Alaska Railroad to "its" land is the fact of Native and other claims. They fall into four classes:

1. Selections made under ANCSA by Villages. These are existing selections made between 1972 and 1975. (There *may* be Doyon, Ltd. or Ahtna, Inc. selections as well, but I do not think so.) These selections are a fact. They await adjudication. Their validity or invalidity is a present fact.

2. Rights (if any) of Cook Inlet Region, Inc., and of Chugach Natives, Inc., to have certain lands made available for selection. There are no selections as yet. Rather selections would be the probably result of the Government taking action that these corporations would contend is a duty owing to them under the circumstances, and that the government might contend is discretionary.

3. Valid existing mining locations, if any.[1]

4. Valid existing Native allotments, if any.[2]

As with any other kind of property dispute, the rights of the parties can be analyzed and evaluated. I will leave to CIRI and to Chugach Natives, Inc., their own arguments. As far as the Villages are concerned, however, it is my opinion that present property rights exist.

It is my opinion that these Village selections cannot be conveyed to the State by the United States, and that no utility would flow from the effort.

There is a beguiling simplicity to the arguments that Congress should convey to the State "all of the railroad lands," or "do whatever is necessary" to clean up the title. Such simplicity is deceptive, and the ramifications of the effort are profound.

Aside from the emotional, but altogether accurate argument that Congress should not visit upon the Alaska Native Claims Settlement Act what has all too often been the fate of deals struck with Indians (that they are honored only until inconvenient), there is the practical problem that these particular Indians are not apt to go away to ponder injustice in solitude. They are apt to repair to the Courthouse, and they have a very good case. Additionally, elsewhere in the State, many contracts exist for hardrock mineral exploration and oil and gas exploration on lands selected by, but not yet conveyed to, Native corporations. Millions have been expended in reliance on a Native selection as a vested right. Such interests could not lightly contemplate the precedential value of so cavalier an attitude to Native selections as the F.R.A. advocates.

In your remarks, Senator Stevens, you indicated Section 5 of S. 1500 was meant to speak solely to the lands in the hands of the State after a lawful transfer. As you obviously swiftly noted in response to the testimony, the language is susceptible to interpretation as an effort to declare that the title to lands involved in the transfer is different than it in fact is. The problem arises because the language of S. 1500 does not admit the possibility that some land administered by the railroad does not

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[1] These types of interests distinguish themselves by not necessarily appearing on current BLM status plats. Also, in the days when railroad withdrawals were being made, there were very poor status records and no need to record claims with the BLM. We have heard rumors that such claims exist.

[2] See footnote 1.

"belong" to the United States, or at least does not belong to the United States free of a statutory obligation to convey it to persons other than the State.

The State does not need to spend some number of years litigating with Native Village Corporations and others title to lands which the Railroad or the Federal Department of Transportation demands the State "retain." Even less does the United States need to litigate the constitutionality of Section 5, or pay compensation for any taking. At the very least, these issues would cloud land use decisions by the State with respect not only to these, but other State lands. Little economy to the U.S. Treasury would result from paying for the taking. The Justice Department and the State Attorney General's Department surely both have better things to do, as do the Natives' counsel.

Section 7 would complicate matters. The Railroad has contended in the past that it "needs" all "Its" land. The Secretary could reasonably be expected to take a dim view of the "diversion" of any of the land to other uses, such as by recognizing a valid existing right. DOT has proven remarkably stubborn in its insistence in the past that it should be exempt from ANCSA. It might prove less than tolerant of the State's recognition of reality.

No private industry invited to purchase the land in question at fair market value would place much faith in the claim of the Railroad to this Native land. The land would not be "bankable." In 1971 Congress authorized these selections. In 1974 (at Eklutna) the selections were made. The Natives are entitled to the performance of their contract.

Respecting valid locations and allotments, we must consider the possibility that a mineral location or Native allotment exists which antedates the railroad withdrawal. The research necessary to make that determination has not been done by me. It is possible that that research has not been done by anyone. Some of the tracts are large enough and wild enough for activities to go unnoticed without special efforts. To the extent any such interests exist, Section 5 is a taking.

Any inquiry into whether or not it was a good idea to have enabled the Natives or the miners to select or locate upon these lands, is irrelevant. Either the complex settlement reached in 1971 is done, or it is undone. To reopen the Settlement Act is to open Pandora's Box. "A promise made is a debt unpaid."

A word about gravel. The Railroad is anxious to have gravel lands sequestered for its benefit.

Whether the agency achieves significant savings through mining "its own" gravel is questionable. Traditionally, the agency has contracted out the excavation and processing. The price of gravel on the open market is largely made up of these same costs. Gravel in the ground has minimal value.

Another consideration is that the State Department of Transportation has historically constructed many miles of far wider road embankment, with gravel obtained free from Federal lands such as the military reservations. It is erroneous to say that the Railroad would necessarily be hurting if not possessed of its "own" gravel reserves.

A final consideration is that these "gravel reserves" (to the extent they are not subject to valid existing rights, and I understand some are not to be) are prime candidates for State selection under the Statehood Act, if the Railroad were transferred without them and the lands properly restored to public domain. Hence, we are really talking about an asset that will be the State's in either event, and thus about an allocation of *State* resources. Why should Congress attempt to dictate which State resources are segregated for "use" by the State Railroad?

Senator Stevens, I submit with this statement and also for the record, a short critique of the Bivens report filed by Governor Hammond or Commissioner Ward, and a memorandum of points and authorities as to Native Selections.

BRIEF CRITIQUE OF BIVENS/ISER STUDY

An initial swift reading of the Bivens/ISER study submitted to the committee, indicates a need for a few comments:

At several points (for example, p. 38) the study notes disapprovingly a recent tendency toward some management decision-making in Washington, rather than Alaska. The possibility exists and should not be overlooked, that greater centralization of decision-making resulted from concern about the past pattern of local decisions. Local railroad management has come under some substantial criticism in the past from other agencies for its erroneous claims of special wisdom in its decisions.

At page 27, the report notes that 8,035 acres of "railroad land" are located within Native Village withdrawals and are "potentially subject to claims." The report might more accurately say that these lands "have been selected by the Villages." There is no "potentiality" about it.

At p. 26 and p. 36 some 27.3 miles of right-of-way are identified as being within the Chickaloon area. The spur line to Chickaloon was abandoned and torn up. A highway was built over it. The highway was conveyed to the State. I doubt any such Chickaloon right-of-way exists, and the Railroad certainly does not "control" it.

At p. 31 the report notes that the regulations indicate the railroad would retain no lease lands and no gravel reserves, and have only a "limited" easement right in right-of-way, should the Natives obtain a conveyance of their selections. It is important to note that the report overstates the case in this regard. Many lease lands and gravel reserves have not been selected. Gravel reserves may be retained to the extent of the area actually used between 1971 and 1975, but not depleted. The easement for right-of-way would be as "unlimited" as any other railroad right-of-way easement. Indeed, it is our belief this railroad itself has only the same easement across other Alaska lands.

It may be true that Cook Inlet Region, Inc. has asked the Secretary of the Interior to place all other lands administered by the Railroad into its selection pool, but that has not yet been done by the Secretary, who shows no particular willingness to do so.

At page 33 the report states that the "normal mechanism" for a railroad to do what it must to in its right-of-way is for the railroad to have fee simple ownership of the land. In public land law states, such as Alaska, that statement is simply not true. Cases uniformly hold that Federal railroad right-of-way grants are an easement. Past patents of land in Alaska have *not* excluded a fee right-of-way for the railroad from the legal description of the grant. Within the list of management needs within the right-of-way, on p. 33, only items 8 and 10 would need technical qualifications to comport with our idea of what a railroad easement is.

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[Memorandum]

From: Burr, Pease & Kurtz, a professional corporation.
Re: Constitutionality of Section 5, Alaska Railroad Transfer Legislation.

The purpose of this memoradum is to determine whether § 5 of a proposed bill for the transfer of administration of the Alaska Railroad to the State of Alaska constitutes a taking of property from Alaska Native Village Corporations which would necessitate just compensation under the Fifth Amendment of the Constitution. The proposed section provides that: "any claim for the rail properties of the Alaska Railroad under any Federal law other than this Act for which *legal title* has not *vested* with the claimant, is hereby revoked." (Emphasis added).

Eklutna, Inc. one such Village Corporation; has selected approximately 2,800 acres of land which is claimed by the railroad for future use in its operations. The selections have not yet been patented; and were the strict letter of the proposed section enforced, it is clear that patent to these lands would not be issued to Eklutna. Factual illustrations such as the foregoing are made with reference to Eklutna, because the authors are familiar with land status respecting it. There are other Village Corporations similarly situated.

Should Eklutna be denied patent to these selected lands, the losses suffered would be great indeed. In order to replace the selected land, Eklutna would have to look to deficiency lands to meet the over 92,160 acre entitlement granted under §§ 12(b) and 14(a) of ANCSA (43 USC §§ 1611(b) and 1613(a)). These lands will most likely be located in Township 15 or 17 North, Range 3 East, Seward Meridian, which is mountainous and glaciated terrain with little or no economic value. There is also the possibility that by recent congressional action additional in lieu lands could be made available elsewhere in the State, but these lands would be located far from the Village of Eklutna and would have little or no surface value.[1] Therefore, the lands in question which have been selected by Eklutna are not replaceable. If patent is not granted to these lands, Eklutna would suffer a loss equal to the fair market value of these lands, which is estimated to be in excess of $28,000,000.

An opinion on the constitutionality of § 5 of the proposed legislation was prepared for the Director of the Office of Management and Budget over the signature of Robert A. McConnell, an Assistant Attorney General from the Office of Legislative Affairs of the Department of Justice. That opinion concludes that a Native group (sic) has no property interest in lands which it has "applied for" (sic) under ANCSA and for which it has not yet received patent. We have reviewed that decision and

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[1] Under Public Law 96-487 (the d-2 bill), such lands would have to be vacant, unappropriated and unreserved at the time of withdrawal. Thus, instead of receiving priority of selection under 43 USC §§ 1611 and 1613, Eklutna would receive only those lands which the State and other Native corporations had no desire to select, and which the United States had no desire to reserve.

the applicable law, and have concluded that the opinion is in error. Under the terms of the Settlement Act, Eklutna acquired a valuable property right at least as early as the date when valid selections were made for the land in question (1974). The remaining step of obtaining patent to these lands is a ministerial formality in light of the clear understanding by all concerned that those lands do not meet the description of any exception to the selection rights granted to Eklutna under the terms of the Alaska Native Claims Settlement Act. Thus, Eklutna has acquired a vested right or proprietary interest in these selected lands which cannot be taken by an act of Congress without just compensation for the fair market value of the land which has been lost.

PROPERTY RIGHTS GRANTED BY CONGRESS IN EXCHANGE FOR EXTINGUISHMENTS OF ABORIGINAL TITLE ARE PROTECTED BY THE FIFTH AMENDMENT

It is said that Congress has the power to extinguish aboriginal title without paying compensation. *Tee-hit-ton Indians v. United States,* 348 US 272, 75 S.Ct. 313 (1955). This assertion is derived from a concept that Congress' dealings with the Indian tribes are purely political matters in which the courts will not interfere. *Id.* at 281, 75 S.Ct. at 318. That concept itself is open to question and there is a modern trend in constitutional theory which demands that Congress, in its dealings with the Indians, conduct itself with fairness and respect for their property rights. *United States v. Sioux Nation of Indians,* 100 S.Ct. 2716, 2739 (1980).

Regardless of whether Congress has this power or not, it also has the power, when extinguishing aboriginal title, to replace that form of ownership with fee title, trusteeship, or other recognizable interests in property. *See,* House Report No. 92-523, Public Law 92-203, reprinted in 1971 U.S. CODE CONG. & ADM. NEWS, 92nd Congress, 2193 (1971). Once Congress takes the step of creating traditional Anglo-American interests in property for the benefit of individual Indians or Indian groups in exchange for extinguishment of aboriginal title, there can be no dispute that the rights so created are protected by the Fifth Amendment of the Constitution, and cannot be taken without just compensation. *See, Cherokee Nation v. Southern Kansas Railway Co.,* 135 US 641, 10 S.Ct. 965, at 971 (1890) (where the court notes that: "Lands in the Cherokee Territory, *like the lands held by private owners everywhere within the geographical limits of the United States* are held subject to the authority of the general government to take them for such objects as are germaine to the execution of the powers granted to it, provided only that they are not taken without just compensation being made to the owner."); *Tee-Hit-Ton, supra,* at 277-78, 75 S.Ct. at 316 (where the court held: "Where Congress by treaty or other agreement has declared that thereafter Indians were to hold the lands permanently, compensation must be paid for subsequent taking"); *United States v. Sioux Nation of Indians, supra,* at 2744. Thus, when the United States, by treaty with the Sioux Nation, created a reservation for the Sioux Nation and by subsequent act of Congress relinquished all rights of the Sioux in that reservation without providing full compensation, it was found that a taking existed which necessitated full compensation be made to the Sioux Nation. *Id.* Similarly, when a treaty created a reservation for the benefit of an Indian tribe in Montana and that reservation was cut by more than 50 percent in size through an act of Congress (which created a withdrawal for a bison reserve and further withdrawals for school lands and for grants for charitable institutions), it was held that a taking took place which required that compensation be paid. *See, Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana v. United States,* 437 F.2d 458 (Ct.Cl. 1971).

Thus, where Congress extinguishes aboriginal title and trespass claims and replaces them with money compensation and a grant of land in fee title (as was the case in the adoption of ANCSA), the rights granted by the Act, because they are identical to the rights traditionally held and recognized under Anglo-American law, become protected under the terms of the 5th amendment of the constitution. (*See* cases cited *supra*). The McConnell opinion, however, takes the position that no vested rights were created as a result of ANCSA—at least, that no rights were created by adoption of the Act, withdrawal of lands for selection, and proper selection of lands under the terms of the Act—all of which took place with regard to the lands now sought by the Alaska Railroad. On the contrary, an examination of the Act clearly demonstrates that Congress, in making withdrawals and creating selection rights under ANCSA, did create a vested, clearly defined, right to selected lands where the selections are in full compliance with the Act, and regardless whether a conveyance has yet been issued by the Secretary of Interior.

ANCSA GRANTS CLEARLY DEFINED RIGHTS IN LAND TO NATIVE CORPORATIONS

Under § 11 of the Alaska Native Claims Settlement Act, Congress has withdrawn "public lands" surrounding Native villages (including the Native Village of Eklutna). This withdrawal was made by Congress, and not (as McConnell mistakenly asserts) by the Secretary of the Interior. This withdrawal is subject to certain exceptions, but they are well defined by the Act itself. The most critical of the exceptions for our purposes are those dealing with interests in land preserved for the benefit of the Federal government. These exceptions are but a few; they consist of §§ (e), 11(a)(1) and § 17(d)(2) (43 USC §§ 1602(e), 1610(a)(1), and 1616(d)(2) respectively). Section 3 (e) merely defines "public lands" for purposes of § 11(a)(1) withdrawals; they are defined as excluding "the smallest practicable tract, as determined by the Secretary, enclosing land actually used in connection with the administration of any Federal installation . . ." (emphasis supplied). Section 11 further excludes from the withdrawal lands located within the national park system and lands withdrawn or reserved for national defense purposes. Finally, § 17(d)(2) grants broad authority to the Secretary to withdraw certain public lands for classification within the national park, forest, wildlife refuge, and wild and scenic river systems provided, however, that this power is not intended to affect the authority of the Village Corporations to make selections pursuant to § 11 of the Act. This latter provision, of course, resulted in Pub. L. 96–487.

There are other exceptions to the rights which a Village Corporation may acquire to land within the withdrawal area. Thus, § 3(e)(2) provides that public lands, for purposes of the § 11(a)(1) withdrawal, will not include land selections of the State of Alaska which have been either patented or tentatively approved pursuant to § 6(g) of the Alaska Statehood Act, or which have been identified for selection by the State prior to January 17, 1969. Section 11(a)(2) withdraws a part of the lands excepted by § 3(e)(2). These provisions accomplish a balancing of the rights of the native corporations with respect to the State of Alaska and to continuing Federal interests indicative of congressional intent to create permanent rights. That is, there would be little utility in Congress' balancing these interests if the Secretary were free to reject these selections.

Finally, there are certain additional provisions of the Act which were intended to protect rights which may have existed in private individuals as of the date of the adoption of the Act, but do not affect Village Corporation acquisition of title. *See* § 14(c)(1) and 14(g) of the Act, 43 USC § 1613(c)(1) and (g). These refer to the relationship of Native selections to private parties, and do not refer to Federal interests in land. See, *Aleknagik Natives Ltd.* v. *Andrus*, 648 F.2d 496, 502–503 (where the court notes that: "When congress intended to remove federal interests from Native selection, it did so by specifically excepting them from the definition of public lands." Citing § 3(e) of the Act). Consequently, §§ 3(e) and 11 provide clear and precise terms for determining the exceptions to village withdrawal and selection rights as those selections relate to federal interests.

THE LANDS CLAIMED BY THE RAILROAD UNDER THE PROPOSED BILL COULD NOT BE RETAINED BY THE RAILROAD UNDER ANCSA

Subsection 3(e)(1), by defining terms used in the operative sections of the Act, means that withdrawal and selection rights under the Act will not apply to those lands which as of December 18, 1971 are part of the "smallest practicable tract" which has been placed into "actual" use by a federal agency in connection with the "administration" of a "federal installation." Whether the lands selected by Eklutna which are now the subject of the claim by the railroad fall within the ambit of § 3(e)(1) will of course turn on the facts involved. In the case of Eklutna, those selected lands which could be affected by the proposed section 5 consist 90 percent of vacant, unimproved, largely forested or marshy land which has never been exploited for any purpose by the Alaska Railroad or any federal agency. The Railroad has made various claims that these lands are needed for use of gravel at some unspecified future time, or as industrial subdivision land, or as railyards, all at some unspecified future time. It is difficult to believe that this claim by the railroad could be considered "actual" use in connection with the administration of a federal installation for purposes of subsection 3(e). After all, "actual" use is a term clearly different from "possible", "probable", "future" or "potential" use. If the matter were brought to litigation, it is clear that the Railroad would be unable to show, among other things, actual use of this land.

This analysis has been accepted by the Secretary under the terms of the regulations adopted by the Interior Department pursuant to subsection 3(e). Under those regulations, it is expressly provided that gravel lands will not be considered lands actually used in connection with the administration of a federal installation where

those lands have not been "disturbed." 43 CFR § 2655.2(b)(3)(iv). Future or proposed use of land has also been ruled not to constitute actual use. 43 CFR § 2655.2(a)(1) and (2), *c.f.* the commentary at 45 Fed. Reg. 70,204 et seq. It is obvious that if the dispute with the Railroad were to continue before the Department of Interior, that Eklutna would prevail under the 3(e) regulations (as well as under the statute) and would obtain title to these unimproved lands inspite of the Railroad's self-serving claim that they are needed in the indefinite future for gravel or other purposes.[2]

THE SECRETARY HAS NO AUTHORITY TO DENY PATENT TO PROPERLY SELECTED LANDS

According to the McConnell opinion, the Secretary of the Interior has the authority to exercise some sort of discretion following a selection of lands by Eklutna within a recognized § 11 withdrawal area. We are unable to find any authority for the exercise of such discretion under the Act. As noted above, the balancing of State and Native interests in Section 11 would be nonsensical if the Secretary had any such discretion. The exceptions created to the withdrawal and selection rights are specifically defined, and those exceptions can be triggered only where there are facts which would support a claim that such exception is applicable. Thus, if the lands are not actually used in connection with the administration of a federal installation, the 3(e) exception cannot be triggered. Similarly, if there are no facts to show a valid homestead entry, or tentative approval of selection by the State of Alaska, etc., then there is no authority under the Act to deny patent to the selected lands. Certainly, the Secretary could in some instances deny a selection under the Act, but that denial would have to be based upon *facts* demonstrating that the selection was barred by one of the specific exceptions to withdrawal and selection defined under the Act. There are absolutely no other grounds which could be made for such a denial. In effect, the Secretary's authority under the Act is merely judicial. That is, it is the Secretary's responsibility to determine whether the record shows that a selection has been properly made by Eklutna, and that the lands selected are not exempt from selection under an exception recognized by the Act.

Indeed, the Act makes it clear that the Secretary has no discretion whatsoever to deny patent for a selection that otherwise complies with the Act. Section 14(a) states: *Immediately* after selection by a village corporation for a Native village listed in § 1610 of this title which the Secretary finds is qualified for the land benefits under this chapter, the Secretary *shall* issue to the Village Corporation a patent to the surface estate . . . the lands patented shall be those selected by the village corporation pursuant to § 1611(a) of this title . . . [or § 1611(b)]; 43 USC § 1613(a) (emphasis supplied). The use of the verb "shall" is critical, for it obviously means that the Secretary has the duty to issue patent once a proper selection has been made.

ALL SELECTIONS IN COMPLIANCE WITH ANCSA CREATE RECOGNIZABLE PROPERTY INTERESTS AS OF DATE OF FILING

It has been recognized that the land selection provisions of ANSCSA bear a very strong resemblance to the manner in which rights arise under the mining laws. *Wisenak, Inc. v. Andrus*, 471 F.Supp 1004, 1009 (D.Alaska 1979). This is an accurate analogy, for ANSCA sets up a procedure which, if followed by the Village Corporation, create a vested right to the lands selected if all the steps mandated by the Act are taken. That is, if the land is within a Village withdrawal area and is not subject to any 3(e) exceptions and is not located within a national park or within a national defense withdrawal area, then the Village Corporation, by selecting the land, will have done all that is required to do to comply with the Act, the duty of the Secretary to patent the lands arises, and equitable title exist notwithstanding the fact that the patent itself is not issued. *See*, for example, *Cole v. Ralph*, 252 US 286, 295, 40 S.Ct. 321, 325 (1920) (where the court held that a mining location combined with the discovery of valuable minerals and compliance with applicable laws creates "an exclusive right of possession [and] is property in the fullest sense."); *Davis v. Nelson*, 329 F.2d 840, 845 (9th Cir. 1964) (where the court held that location and discovery of valuable minerals in compliance with applicable statutes creates "a

[2] There is also no question whether the lands selected by Eklutna would fall under any other exception recognized under the Act. The land in question was not tentatively approved or patented to the State, nor was it the subject of selections prior to January 12, 1969. In addition, there have been no claims of right to these lands by private groups which have been or can be recognized by the Secretary under the terms of the Act. We are unaware of any facts which would support any such claims for valid existing rights. Consequently, we see no exception under the terms of the Act which could possibly bar conveyance of these selected lands to Eklutna if the Act were allowed to run its course.

vested property right enforceable and defendable against the United States. . . . Such vested right may be prosecuted to patent.").

These selection rights are also similar to State selection rights under the in lieu provisions of school land grants. Indeed, Native Corporation selection rights are clearly modeled upon the State of Alaska's own selection right, in turn modeled upon the other states' in-lieu selection rights. In *Payne* v. *State of New Mexico*, 42 S.Ct. 333, 255 US 367 (1921) the court held that where a valid selection of in lieu school lands has been made by the State there is: Cast upon the Secretary the duty of ascertaining whether the selector is acting within the law, with respect to both the land relinquished and the land selected, and of approving or rejecting the selection accordingly. The power conferred is "judicial in its nature" and not only involves the authority, but implies the duty to determine the lawfulness of the selection as of the time when the exertion of the authority was invoked by the lawful filing of the list of selection.

That is, the Secretary can do nothing more than determine whether there has been compliance with the Act. If there has been compliance, the Secretary has the duty to issue patent. See: *State of Wyoming* v. *United States*, 255 US 489, 41 S.Ct. 393 (1920), where the court held: The power confided to [the land office] was not that of granting or denying a privilege to the state, but of determining whether an existing privilege confered by Congress had been lawfully exercised . . . acceptance of such a proposal and full compliance therewith confer vested rights which all must respect.

*Id.* at 497, 41 S.Ct. at 395. The selection process under ANCSA is no different than that of the school lands selection noted in *Payne* and *Wyoming*. Vested rights are created when the selections are made notwithstanding the fact that patent has not yet been issued. Similarly, under the mining laws, where a valid entry has been made and there is proof of the existence of valuable mineral deposits, lack of a patent does not deprive the entrymen of a valuable property interest.

### THE LEGISLATIVE PURPOSE OF ANCSA WOULD BE DEFEATED BY ADOPTION OF THE PROPOSED LEGISLATION

We can see, therefore, that the letter of the Settlement Act very clearly establishes the rights of Village Corporations to make selections. The Secretary's responsibility, after a selection has been made, is simply the judicial one of determining whether the selection is in compliance with the terms of the Act; if it is, he "shall" patent the land. This limitation on discretion and the certainty created by the Act is manifestd not only by the letter of the Act, but commanded also by the context and the legislative history.

It must be recognized that ANCSA represented a political settlement of claims of aborginal title asserted by Alaska Natives in a variety of lawsuits and proceedings which exited at the time the Act was adopted. House Report No. 91-523, *supra* at 2194; *United States* v. *Atlantic Richfield Co.*, 435 F. Supp. 1009, 1017-18 (D. Alaska 1977) *affd.* 612 f.2d 1132 (9th Cir. 1980). This settlement involved a careful balancing of the rights of the State of Alaska, the Federal government, private parties, and Alaska Natives. House Report, *supra*, at 2195 (where it is stated: "These acreage and dollar figures represent a carefully considered judgment on the part of the Committee of what would be fair to the Natives, fair to the State of Alaska, and fair to all of the people of the United States in light of present day conditions."); Letter from Secretary of Interior to Hon. Carl Albert dated April 4, 1971 reported in 1971 U.S. CODE CONG. AND ADM. NEWS at 2216, 92nd Congress, First Session. If the United States or the Secretary is said to retain the right to deny patent to lands which have been properly selected under the terms of the Act, this balance of interests among various groups would be upset to the detriment of Alaska Natives and in favor of one or more of the other groups. There is certainly no indication in the Act that the United States or the Secretary is at liberty to readjust the political balance which Congress created when the Act was adopted. That was a political judgment which was made by Congress, and which was fully set out under the terms of the Act.

Second, there was a concern on the part of Congress in drafting the Act to create rights on behalf of Alaska Natives which were well defined and understandable, not only by the Natives themselves, but by third parties as well.[3] If these rights were

[3] Earlier versions of proposed settlement legislation called for subsistence use permits issued and maintained at the discretion of the Secretary of Interior. Interior argued against this system and proposed instead withdrawal and selection of fee interests in land by village corporations—the system which was finally adopted by Congress. According to the Department, this approach was preferred because "any land made available for settlement of Native claims should be clearly identified in the bill and all other land in the State should be free from any

clearly defined and well understood, then third parties such as the State, private groups and the Federal government could plan and act accordingly. By contrast, if the bundle of rights created by the Act remained ambiguous or amorphous, the confusion could be seriously detrimental to not only the Natives themselves but also to the State and third parties. Hence, it was essential that the interests in the land granted by the Settlement Act create rights in land which were certain and well defined. The Act accomplishes this purpose by carefully defining the withdrawal areas, the selection rights, the exceptions to the withdrawals and selection rights, and conditions to be included in the patent. All these matters are exclusively defined by the terms of the Act, and no discretion is vested with the Secretary of Interior.[4]

The balancing act achieved under the terms of ANCSA could be seriously compromised and irrevocably damaged if it were upset by subsequent legislation. It must be kept in mind that as part of the settlement, claims of trespass arising out of aboriginal title were extinguished, as well as the claim of aboriginal title which underlies such trespass claims. 43 USC § 1603. The extinguishment of trespass claims based on aboriginal title has been held to constitute a taking of a valid property right for which compensation was required. *United States* v *Atlantic Richfield, supra,* at 1023. That compensation was in the form of the land and moneys provided to Alaska Natives under the terms of the Act. *Id.* If § 5 is adopted, and Alaska Native Villages are to be denied a portion of their land entitlement, this would create the spectre of a breach of the agreement by Congress which could generate new trespass litigation and an erosion of the major benefits of the Act. Such a situation would certainly be reached if § 5 were adopted and if there were no right to compensation in the Court of Claims under which Eklutna (and other Native Corporations) could receive fair market value for the loss of the lands in question. Such impairment of the settlement, failure of consideration as it were, would most clearly impact those Native communities most impacted by past trespass, and having the largest monetary claims.

Our analysis of the Settlement Act and our conslusion that vested rights arise at the latest as of the date of selection (and notwithstanding the fact that patent has not been issued) is not an isolated conclusion. There are others who share this view. In *Wisenak, supra,* at 1009, U.S. District Judge vonder Heydt indicated that the Native rights vested at the time the corporation filed its selections. It has also been recognized that important rights under the Settlement Act can arise prior to the issuance of patent itself and that patent is not the most critical or significant stage in the selection process for determining the existence of vested rights. Thus, in *Aleut Corp.* v. *Arctic Slope Regional Corp.,* 410 F. Supp. 1196 (D. Alaska 1976), it is was held that a Regional Corporation had the obligation to distribute revenues earned from the mineral estate of lands selected, notwithstanding the fact that the Corporation had not yet received patent to the lands.[5] Similarly, in *Aleknagik, supra,* it was held that withdrawal and selection rights created for a Native Village under the terms of the Act could not be defeated by the issuance of patent under a townsite reservation. There a patent had not yet been issued to the Village Corporation, indeed not even a selection had been made, and the townsite trustee was asserting a claim which predated the Settlement Act. Nevertheless, the court concluded that the trustee was asserting a federal interest and that this interest could not fall within the ambit of 3(e) and therefore could not prevent withdrawal and the attaching of selection rights created by the Act, even though no selection had yet been made. Transfer of the lands was enjoined.

### THE DISTRICT COURT DECISION IN CAPE FOX DOES NOT SUPPORT THE CONSTITUTIONALITY OF THE PROPOSED LEGISLATION

The McConnell opinion makes much of U.S. District Judge Fitzgerald's decision in the *Cape Fox* case, *Cape Fox Corp. v. United States,* 456 F. Supp. 784 (D.Alaska 1978), without noting that it had been reversed, —— F.2nd —— (9th Cir. 1981). In that decision, Judge Fitzgerald concludes that no rights can arise on behalf of a corporation prior to the date of conveyance. However, that decision involved exist-

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settlement claim. Only through this method will the rights of Natives and non-Natives be clearly established and the development of Alaska for the benefit of all people be allowed to progress in an orderly manner." Letter of May 27, 1971 from Secretary Morton to Hon. Wayne Aspenall, reprinted *supra,* at 2206

[4] The only meanful discretion given the Secretary is with regard to § 17(D)(2) which, as we have noted, has absolutely no effect upon Village withdrawals and selection rights.

[5] There are a number of oil companies who have paid millions of dollars for the right to conduct exploration on land selected by, but not yet patented to, certain regional Corporations. If no rights vest by selection, there would be a serious question raised as to the right of these companies to conduct operations on these lands.

ing contract rights under §14(g) of the Settlement Act which rights predated adoption of the Act. It did not involve an attempt to revoke benefits which were created by the Act itself.

Second, Judge Fitzgerald misconstrued the significance of Public Law 94-204 which authorized the Secretary of Interior to establish escrow accounts for monies earned on lands selected by, but not yet patented to Native corporations. Under prior law, all funds received from management of the public lands were required to be deposited in the Treasury of the United States. P.L. 94-204 authorized the creation of escrow accounts and required the Secretary to pay into those accounts all monies earned from selected lands not yet patented. The Secretary is required to pay the proceeds to the Native corporation upon patent. Judge Fitzgerald held, in effect, that because the Secretary did not have this duty prior to the adoption of Pub. L. 94-204, there was an intent on the part of Congress when it adopted ANCSA not to create any vested rights in village or regional corporations prior to the date of conveyance.

However, Public Law 94-204 was not intended to *amend* the Settlement Act so much as to clarify "ambiguities" in the prior Act. House Report #94-729 reprinted in 1975 US CODE CONG. AND ADM. NEWS at 2382, 94th Congress, First Session. As far as Congress was concerned, when it adopted the escrow provisions it was merely repairing a technical deficiency in the duties of the Secretary which was defeating a major purpose of the Act—i.e. to recognize that income from the land belonged to the Natives because vested interests arose as soon as a proper selection had been made under the terms of the Act.[6]

Third, Judge Fitzgerald misconstrued the significance of §22(i) of ANCSA (43 USC §1621(i)). That provision gives the Secretary the authority to manage selected lands prior to their conveyance to a Native corporation. According to Judge Fitzgerald, the absence of the right of Native corporations to veto management decisions made by the Secretary under §22(i) implies that there is *no* enforceable right against the Secretary prior to conveyance. But the fact that a corporation could not veto the decisions of the Secretary authorized under §22(i) does not mean that there are no enforceable rights arising prior to patent. The Secretary certainly has the responsibility to manage selected lands in a manner which is not inconsistent with the basic rights of the Native corporation which will eventually receive patent. If the Secretary were, for example, to enter into a lease with a private party for less than an adequate consideration, the Native corporation would certainly have a cause of action for breach of fiduciary duty. The corporation would in effect hold a property interest as a beneficiary of the trust relationship existing prior to conveyance of the land.

The fact that ANCSA was not intended to create "lengthy" trust obligations does not affect this conclusion. The trusteeship concept was rejected with respect to the period after conveyances; Native corporations are to receive a fee interest in land, rather than an interest held in trust by the Secretary.

The value of that fee interest would have little meaning if the Secretary were given free rein to enter into contracts or take other management decisions which would be seriously detrimental to the eventual fee owner. Consequently, a fiduciary obligation must be created on the part of the Secretary to protect the fee interest to be conveyed to the Native corporation. As a result, ANCSA does not repudiate *all* trust obligation. Instead, only *lengthy* wardships or trusteeships are expressly repudiated by the Act. 43 USC §1601(b). The very use in the Act of the term "lengthy" indicates that interim trust obligations still exist in order to protect vested rights arising from selection prior to conveyance. It is conveyance which discharges the trust, not the adoption of ANCSA.

In addition, there is no indication in §22 or anywhere else in the Act that Congress intends to override or extinguish the doctrine of "relation back." It is this doctrine, indeed, which made interim management authority for the Secretary necessary. Under this doctrine, a patent relates back to the date of entry or location. *See, Knapp* v. *Alexander-Edgar Lumber Co.*, 237 US 162, 35 S.Ct. 515 (1915); *United States* v. *Etcheverry*, 23 F.2d 1923 (10th Cir. 1956). The doctrine provides substantial protection to entrymen, locaters etc. against adverse actions by third parties occurring prior to the date of patent (when the government still holds legal title) where such actions may affect the value of the fee once it has been conveyed. Section 22(i) then, may equally be seen as evidence that vested rights do exist. Otherwise, §22(i) would be unnecessary.

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[6]That the funds must remain in escrow until patent is merely a recognition of the need to determine whether a given selection is valid. if not, funds distributed prior to patient would have to be recovered. Holding these funds in escrow eliminates any necessity for future collection against a Native corporation in the event the selection is unlawful.

In *Knapp, supra,* a homestead entryman brought suit against a third party for removing timber from the homestead entry after the date of entry but prior to the date of patent. The third party had entered into a settlement agreement with the United States and contended that this agreement, because it had been entered into with the owner of legal title at the time of the removal of timber constituted a bar to the action by the homesteader. The United States Supreme Court held that under the public land laws, the homesteader did have a valid cause of action notwithstanding the fact that the timber was removed prior to the date of conveyance. Referring to the doctrine of relation back, the court concluded: We think it is open to the homesteader to seek redress in the courts for wrongs done to his interest by such an unwarranted compromise, as for other legal errors committed in the course of administration.

35 S.Ct at 517. Thus, in spite of the fact that the United States may retain legal ownership in the property and retains exclusive jurisdiction over management, this does not prevent the entrymen (or Native corporation), after the date of patent, from bringing an action against third parties for wrongdoing affecting the value of the fee which occurred prior to the date of patent.

Section 22 does not purport to affect the doctrine of relation back. The section simply authorizes the Secretary to enter into agreements with third parties with respect to the land and give authority to manage land. It does not create an immunity from civil actions brought by the patentee based on acts of wrongdoing occurring prior to the data of conveyance which have an adverse affect upon the value of the interest conveyed to the patentee. If Congress had intended such an immunity to be created, it certainly would have stated this intent in express terms. Therefore, § 22(i) does not support the proposition that a Native corporation has no property interests which are subject to legal protection prior to the date of conveyance; it stands for exactly the opposite proposition.

Finally, if, as *Cape Fox* originally asserts, no rights can arise until the time of patent, there is no explanation in *Cape Fox* as to why a duty under § 7(i) of the Act to distribute revenues from subsurface lands can be imposed upon a Regional Corporation prior to patent, where the letter of that section itself refers only to revenues received by a Regional Corporation from lands "patented to it." If no ownership interest can arise prior to patent, it seems strange indeed that an ownership duty as found in § 7(i) could be imposed prior to patent.[7] It is even more strange that sophisticated mineral companies would invest in such ventures on unpatented lands, if there were no vested right in their vendor.

### CASE LAW DOES NOT SUPPORT THE CONSTITUTIONALITY OF THE PROPOSED LEGISLATION

We find a number of points raised in the McConnell opinion difficult to understand, to say the least. For example, it notes that the *Wisenak* dicta stating that rights become vested at the time of selection can have no meaning since they cannot truly be determined to be valid until "an extensive administrative process has been completed including appeals to Federal Court." But this is a very basic error in Mr. McConnell's understanding of the law. There is an important distinction between the creation of a right, and an enforcement of that right. As noted *supra,* the existence of a vested right under the terms of ANCSA (as with the mining laws, and with State selections and in lieu school land selections) will turn on the existence of facts. Once those facts exist, the right exists. If the Secretary should choose to deny the existence of that right, an appeal would have to be taken to the Federal Courts to enforce the right which had previously come into existence. Thus, as the Supreme Court noted in *Payne, supra,* the New Mexico selection of in lieu school land created a vested right as of the date of that selection, albeit the final judgment by the United States Supreme Court upholding New Mexico's rights to the land was not handed down for some years after that.

McConnell discounts the decisions in *United States v. West,* 232 F.2d 694 (9th Cir. 1956) and *Healing v. Jones,* 174 F.Supp. 211 (D.Ariz. 1959) affd. 373 US 758 (1963) (per curiam) because these cases involve enforcement of equitable interests held by Indians in land for which the United States acted as trustee. This is a distinction

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[7] In any event, Judge Fitzgerald was reversed on this question by the 9th Circuit which held that the question of when rights became vested for purposes of ANCSA was a matter that had to be determined under the jurisdiction of the Court of Claims. The 9th Circuit also noted that claims based on failure to patent the lands "immediately" as required by ANCSA were mooted, given that the lands were conveyed to Cape Fox as of the time of the appeal. The Court further characterized much of Judge Fitzgerald's thinking as based properly on the fact not that Cape Fox Corporation had no interest in the property, so much as that Cape Fox was not in possession of the property.

without a difference, for once a property right has been granted by Congress to an Indian tribe or corporation, that property right becomes as enforceable as any other property right, be it a fee interest or not, be it held by an Indian or nonIndian. (*See, Kansas Railway Co., Sioux Nation, Tee-Hit-Ton* and *Confederated Salish and Kostenai Tribes*, cited *supra*).

McConnell also fails to understand the basic nature of the Settlement Act in his discussion of the *Yakima Tribe* v. *United States*, 158 Ct. of Claims 672 (1962). According to McConnell, that case is distinguishable because it involved a situation where the plaintiffs had been promised certain land in exchange for old land which was given up, whereas under ANCSA, aboriginal rights were extinguished allegedly in exchange for the right to "apply" for land. What McConnell fails to recognize is that aboriginal rights were not extinguished under ANCSA in exchange for the right to ask the United States to grant a privilege which it could deny at its will. Rather, aboriginal rights were extingushed in exchange for benefits which were clearly set out in the Act. These benefits included a sum certain in money to be paid out under a specific time table, and 40 millon acres of land to be selected by a process that was firmly established in the Act. The Village and Regional Corporations did not "apply" for land under ANCSA. Rather, they *selected* that land to which they were specifically entitled under the clear letter of the Act as it was originally written.[8]

CONCLUSION

To amend ANCSA by the device of § 5 of the proposed legislation, would be nothing more than taking back that which had expressly been given to the beneficiaries of ANCSA some 10 years ago. The land entitlements of that Act, which were to be patented to the Village and Regional Corporations "immediately" have long since become vested rights which matured at least as early as the date of selection. As of that date, at the very latest, the Federal government lost its right to take back the benefits that it originally granted when it adopted the Settlement Act.

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ALASKA TRANSPORTATION PLANNING COUNCIL,
*Skagway, Alaska, August 1, 1981.*

Hon. TED STEVENS,
*U.S. Senate,*
*Russell Office Building, Washington, D.C.*

DEAR SENATOR STEVENS: This is in response to your August 1, 1981, telegram to the Manager of the White Pass & Yukon Route, Rail Division, Box 436, Skagway, Alaska, in regards to the Senate Committee Science and Transportation holding hearings in Anchorage and Fairbanks the second week of August regards legislation to transfer the Alaska Railroad from federal ownership.

As chairman of the Alaska Transportation Planning Council, an advisory group to the Honorable Jay Hammond, Governor State of Alaska, I would advise that our committee, made up of citizens from all sectors of our state, made a careful study and review over many months, of the Rail Systems in the State of Alaska.

We also had considerable participation in the statewide rail systems study by Bivens and Associates, Inc., and Gordon Fay Associates, Inc.

In January 1981 the Alaska Transportation Planning Council recommended the following to the Governor of Alaska. It is our humble wish that our recommendation be accepted as our written testimony:

*Quote*

The Alaska Transportation Planning Council has reviewed the Final Report of the Statewide Rail Systems Study and Continuing Rail Planning Process.

Our judgement, is that Bivens and Associates, Inc., and Gordon Fay Associates, Inc., have presented a factual review in a clear and concise form. They have avoided recommendations based on political expendiency. If the citizens of Alaska expected this report to recommend immediate expansion of the present rail system they will be disappointed.

The Council recognized that the need for a basic transportation system to support Alaska development is academic—the question is, what kind of transportation? Where should it run? And who should run it?

First, what kind of basic transportation does Alaska require? In our view, it requires a type of transportation that is economically viable: Transportation that

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[8] The comparison made by McConnell between ANCSA and Native allotments is completely out of place. The rights created by ANCSA are totally different from rights previously established for Native allotments. In any event, the rights created by the Allotment Act are far more substantial than McConnell has indicated. *See, Pence* v. *Kleppe*, 529 F.2d 135 (9th Cir. 1976).

fully supports the total development of the area, without hidden subsidy; transportation based on the free enterprise system allowing competitive factors to generate a constant search for technical improvement, higher productivity, and lower costs to the consumer; transportation that attracts new investment capital; transportation that can, through efficient operations, earn a reasonable net profit for subsequent re-investment in the system to support expansion, and provide reasonable benefits for all concerned.

Recognizing the State of Alaska's enviable position in energy sufficiency at the present time, we believe that the State's policy in planning for development of a transportation system throughout the state should strongly consider energy requirements and weigh proposed plans as to economical and conservative use of energy.

Let me say here that efficiency—with profit—is a respectable goal, one supported by all governments who use every honorable devise to export more than their voters consume. Indeed, there are segments of the population which will condemn profit—and in the same breath, throw out their government if it fails to produce a favorable balance of trade.

Secondly, where should it run? Before answering this question, it is necessary to outline the basic purpose of the transportation system. We need air transportation for fast passenger and freight reasons. We also need a basic heavy-duty, day-in and day-out type of transportation system that is capable of efficiently transporting the state's resource products to market, at a price that will permit the state's developers to effectively compete with developers more favorably located to the south.

It is a basic fact that world trade starts at the edge of the sea. It follows that the quicker you can get your products to the sea, the better off you are.

This fact was recognized eighty years ago when the White Pass & Yukon Railroad was constructed, and some sixty years ago when the Alaska Railroad was constructed; and quickest and cheapest routes to the sea were selected and developed—and they still operate today—doing the job they were intended to do over eighty years ago. As development takes place, there must be modifications, additions, extensions, improvements—not only in the extent of the service provided, but also in its range and quality.

Thirdly, who should run it? Competent transportation men should run it—men who have the knowledge and experience to develop the system, properly serve the public, and earn sufficient income to service the system's debt, pay current material and labour costs—and show a reasonable profit at the end of each fiscal year.

Governor, this is hard work. But it is reality.

Roads? There must be roads for lines of communication. This falls into the public sector, paid for by the taxpayer's dollar—including the taxes collected from the organized transportation systems—railroads, airlines, truck and bus companies. Care must be taken, however, to plan roads which will strengthen the economic base of the state and not merely duplicate existing service.

There will come a time in the development of the state when duplication of facilities will be justified—indeed desirable. At this juncture of the state's development however, roads have a certain appeal to some segments of the public. There is a critical need for better airport facilities, a situation which certainly requires attention. There is a need for major terminal developments plus a wider distribution of gravel strips to serve the growing number of wheeled aircrafts serving the state and to support air transport on a statewide basis.

Finally—let us look at Alaska today. It has been said that no part of this state has prospered until it had a good transportation system. This statement may partly explain why the state's development has surged ahead relative to other northern areas around the world, including parts of the Canadian Shield.

Our good neighbor, the Yukon Territory, has been a world leader in basic transportation development, being the birthplace of integrated containerized transportation developed to fit the Yukon's needs—a concept for unitizing freight which has now been adopted by the two major Canadian railways—indeed ship and train and truck transportation systems throughout the world. It was conceived and developed by Northerners who raised the investment capital required to build it and set it in motion.

Now to answer the question, where should it run? Before this question can adequately be answered we need an inventory of and location of the known mineral deposits or other material resources that, if developed, would require transportation capable of handling large volumes in bulk at a low economical rate.

A State policy needs to be developed setting out the assistance private developers can expect from the State in providing townships and other valuable assistance during the development stage. The State should be prepared to spend large amounts of money up front on a one shot basis for supporting services during the development period.

The Council recommends that this study be continued to identify areas of practical and potential resource developments; areas that would require basic transportation to handle large volume bulk traffic. There is an old saying that the Germans built railroads for war; the English for economic reasons and the Americans for the Hell of it. Let's make sure Alaska follows the English concept.

The Council has serious doubts that the Alaska Railroad will ever reach its potential to serve the State of Alaska efficiently while being guided by Federal bureaucracy from Washington with a pair of reins four thousand miles long. It is our recommendation as members of the Alaska Transportation Planning Council that the State of Alaska explore the possibility of taking over the Federally operated Alaska Railroad. This recommendation is based on the fact that the State of Alaska is on the threshold of major resource development, such as coal and other minerals, in addition to our petroleum resources.

Certainly the State could form an operating corporation, or lease to a private operation, that could slash the excessive operating expenses of the present day Alaska Railroad and install some innovations and imaginative ideas that could benefit all our citizens.

*Unquote*

It is uncertain at this time if we can have representation at the hearings, but we sincerely hope this written testimony will receive consideration and that it will contribute to your deliberations.

Sincerely,

MARVIN P. TAYLOR, *Chairman.*

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INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS,
ANCHORAGE LOCAL LODGE No. 601,
*Anchorage, Alaska, August 14, 1981.*

DEAR MR. CHAIRMAN: My name is Paul Dunham. I am the elected Business Representative for Alaska Local 601 of the International Association of Machinists. The Machinists Union represents over 25,000 railroad machinists across North America, including all the machinists and mechanics for the Alaska Railroad.

Our Union has been and will continue to be in support of all efforts to hasten the growth of our nations railroads. And one of the most significant of these efforts is, of course, the expansion and revitalization of the Alaska Railroad.

Representatives and rank-and-file members of the Machinists Union have reviewed S. 1500 and come up with the following observations and recommendations.

It is our opinion that the overall intent of S. 1500 is worthy of our support. However, we are concerned with some aspects of the Bill, especially as they pertain to our members' interests.

Will our members continue to have collective bargaining rights or will their Union status be in jeopardy? We feel secure that the State of Alaska will honor these rights, but are concerned about what will happen if the State contracts the administration of the Alaska Railroad to a private firm or even sells the railroad outright. We cannot support any bill that jeopardizes the Union interests of our members.

Will our members continue to have the job security they need and deserve? Will they retain their seniority rights? The potential problem we see here is our members being displaced by State employees or a private firm's employees, particularly after the one year grace period. Our members have given many years of dedicated service to the Alaska Railroad, and they have earned their place on the team. Any bill we support must protect the job security and seniority rights of our members.

Will our members retain their health and welfare, pension and other benefits? We see no problem with the State of Alaska continuing a comprehensive benefit program, but are concerned with the potential loss of benefits should a private firm take over the running of the railroad. Our members have come to depend and trust in their benefit programs, and any bill we support must insure the continuance of all health and welfare, pension and other benefit programs.

And lastly, while the Bill addresses the pension rights of current employees, it doesn't seem to address pension benefits for employees hired after the transfer takes place. What pension benefits will these employees receive?

Again, the Machinists Union supports the intent of the Bill, but the concerns of our members must be considered. We have nearly 900 members in Alaska with over 85 percent of them employed in transportation—railroad and airline workers—so we are very close to the transportation industry and the needs of these employees.

When our concerns are carefully considered and clearly answered, we will then be in a position to make a recommendation to our membership on whether or not to

support the transfer of the Alaska Railroad from the Federal Government to the State of Alaska.

Thank you.

PAUL A. DUNHAM,
*Business Representative.*

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WEAVER BROS., INC.,
*Kenai, Alaska, September 1, 1981.*

HON. TED STEVENS,
*U.S. Senator, State of Alaska*
*Russell Senate Office Building, Washington, D.C.*

DEAR SENATOR STEVENS: You are considering legislation to transfer the Alaska Railroad to the State of Alaska. We support such a transfer, because the Alaska Railroad will better serve the needs of Alaskans if it is owned by the State rather than the Federal Government. We also understand that you have received word from many truckers operating in our State who are either opposed to the transfer or want numerous restrictions on competition written into the new law to help the Railroad's competitors. We are connecting truckers with the Alaska Railroad, and would strongly object to any provision which would hinder the ability of the Alaska Railroad to compete with other carriers. The Alaska Railroad is a major interchanger of freight with many trucking companies, and any amendments to your legislation which hurt the Alaska Railroad will also hurt our company and many other trucking companies like us. We believe it will also hurt the interest of Alaskans, who depend upon competition to keep prices down. Please include this letter in the record of your hearings and keep in mind that many companies such as ours depend on the Alaska Railroad, and do not want to see it harmed.

Very truly yours,

JAMES C. DOYLE.

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B. F. WALKER, INC.,
DENVER, COLO., *September 9, 1981.*

HON. TED STEVENS,
*U.S. Senator, State of Alaska*
*Russell Senate Office Building, Washington, D.C.*

DEAR SENATOR STEVENS: You are considering legislation to transfer the Alaska Railroad to the State of Alaska. We support such a transfer, because the Alaska Railroad will better serve the needs of Alaskans if it is owned by the State rather than the Federal Government. We also understand that you have received word from many truckers operating in our state who are either opposed to the transfer or want numerous restrictions on competition written into the new law to help the Railroad's competitors. We are connecting truckers with the Alaska Railroad, and would strongly object to any provision which would hinder the ability of the Alaska Railroad to compete with other carriers. The Alaska Railroad is a major interchanger of freight with many trucking companies, and any amendments to your legislation which hurt the Alaska Railroad will also hurt our company and many other trucking companies like us. We believe it will also hurt the interest of Alaskans, who depend upon competition to keep prices down.

Please include this letter in the record of your hearings and keep in mind that many companies such as ours depend on the Alaska Railroad, and do not want to see it harmed.

Very truly yours,

HOWARD H. HARLSON, *President.*

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RULE TRUCKING,
*Anchorage, Alaska, August 10, 1981.*

Senator TED STEVENS,
*Anchorage Federal Building,*
*Anchorage, Alaska.*

DEAR SIR: I would like to go on record as opposing the State of Alaska buying the Alaska Railroad from the federal government.

I have been in trucking, in one form or another, in Alaska since 1957. Currently I am an owner operator, as I have been since 1975. I as any other small businessman,

must pay my own way and make a small profit in order to survive. The Alaska Railroad has been a constant problem, as they have never needed to operate at a profit, since they are subsidized by taxpayers money. I have the fear that we would be faced with the same type of problem with a state owned railroad.

I am sure that any privately operated business will be run in a more efficient manner than a government managed enterprise. Therefore: I feel that if it is at all possible the Alaska Railroad should be sold to a private concern.

A state operated railroad would have the opportunity to dip into state funds if it lost money instead of raising the tariffs, as a private enterprise must, and this again makes it impossible to compete. In addition, the state will not be taxed as we are so again we are at a disadvantage.

However, if the state is going to purchase the railroad I have some suggestions as to the operational procedures which would be used to operate it at a profit.

First; I would suggest that a private firm be contracted to manage the Alaska Railroad and be monitored at all times to see they are operating in the black.

Second; The Alaska Railroad should not be allowed to become a subsidized trucking company and compete with the privately owned motor carriers who must buy their own equipment, pay taxes, and still show a profit in order to exist. The I.C.C regulation change put in effect February 19, 1981 allows a railroad to move goods to their destination which were shipped on a flatcar by container or trailer with no I.C.C. authority. THIS MUST NOT BE ALLOWED TO OCCUR.

Third; The Alaska Railroad should have to maintain a competitive rate structure, pay for their own equipment and operating costs with no subsidies. In addition, they should have to show a reasonable profit, just as the companies I lease to and I must do to survive. WE CANNOT COMPETE WITH A SUBSIDIZED RAILROAD.

Fourth; The Alaska Railroad should not directly compete with any carrier, be it water or highway carrier as private enterprises have these areas well covered.

In closing, I would suggest that the news we are now hearing about the Alaska Railroad showing a profit by carefully checked out, as it is quite a coincidence that just as it is put up for sale it suddenly starts making a profit. This sounds a bit like a used car salesman's spiel to me.

If the state is going to buy the railroad, please operate it on a paying basis so we can survive.

Sincerely,

BEN RULE.

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